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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE, ET AL., *Appellants*

v.

NICHOLAS NORTON, Commissioner of Welfare of the State of Connecticut, *Appellee*

On Appeal from the United States District Court for the District of Connecticut

MOTION FOR LEAVE TO FILE BRIEF, AMICI CURIAE AND BRIEF AMICI CURIAE

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For the American Academy of Child Psychiatry; the American Association of Psychiatric Services for Children; the American Orthopsychiatric Association; the American Parents Committee, Inc; the Center for Community Change; the Child Welfare League of America, Inc.; the Connecticut Child Welfare Association; the Consortium on Early Childbearing and Child Rearing; the Council of Jewish Federations and Welfare Funds; the Day Care and Child Development Council of America, Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization; the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

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Inc.; the Family Service Association of America; the Interreligious Foundation for Community Organization; the National Association for the Advancement of Colored People; the NAACP Legal Defense and Educational Fund, Inc.; the National Association of Social Workers; the National Conference of Catholic Charities; the Catholic Charities of Norwich, Connecticut; the Catholic Charities of Bridgeport, Connecticut; the National Council of Churches of Christ in the United States of America; the National Federation of Settlements and Neighborhood Centers; the National Urban League, Inc.; the Puerto Rican Legal Defense and Education Fund, Inc.; the Salvation Army; the United Church of Christ, Board of Homeland Missions, Health and Welfare Division; the United Presbyterian Church in the United States of America, Health and Welfare Development Unit; the Young Women's Christian Association of the United States of America; and the Children's Defense Fund of the Washington Research Project, Inc.

The organizations listed above, all of which have shown a continuing, substantial interest in child welfare, respectfully move this Court, pursuant to Rule 42(3), for leave to file a brief amicus curiae in this action. The attorneys for appellants have consented to the filing of the attached brief.

THE INTEREST OF AMICI

The Washington Research Project Inc. was established in 1968. The Children's Defense Fund was established by it in 1972. The Children's Defense

Fund focuses principally on the area of children's rights, where it seeks systematic reforms on behalf of all the nation's children, but with particular attention to the special problems of minority and poor children. The Children's Defense Fund's work to vindicate the rights of all children, depends, among other things, on eliminating the vestiges of discrimination against particular children at all levels of governmental policy-making. The statute involved in this case constitutes such discrimination.

The Children's Defense Fund is joined in this amicus brief by national and Connecticut organizations dedicated to the welfare of children, as follows:

The American Academy of Child Psychiatry is a professional society of physicians who are members of the American Psychiatric Association and who are qualified in child psychiatry. Its purpose is to stimulate and advance medical contributions to the knowledge and treatment of psychiatric problems of children. The issues raised by this case are of importance to the Academy because of their relationship to the healthy emotional development of infants and children.

The American Association of Psychiatric Services for Children comprises 180 organizations with a principal interest in providing and/or planning mental health services to children. Among other purposes, it seeks to represent the clinical perspective in those areas which bear upon the emotional development of children. The Association is concerned with the issues in this case because it is aware disruption of mother-child relations presents a serious threat to the intellectual, emotional and social development of infants and young children.

The American Orthopsychiatric Association is a national professional association of psychiatrists, psychologists, social workers and other professionals in the mental health field. Its purpose is to foster research and spread information concerning scientific work in the field of human behavior. The Association is concerned with the issues in this case and the threat they pose to the illegitimate children affected.

The American Parents Committee, Inc. was incorporated in 1947 as a non-profit, non-partisan public service association whose purpose is to work for federal legislation on behalf of the nation's children in the fields of education, child health, child welfare, juvenile delinquency, day care and family planning. The instant case raises an issue of concern to the Committee since research has shown that maternal deprivation impairs the healthy development of children, undermines the essential parental role of their mothers and leads to disruption rather than the strengthening of family life.

The Center for Community Change is a national organization devoted to assisting community development in low income, inner city areas. Its concern in this case arises out of its awareness of the need to assist families in low income inner city areas, rather than subjecting them to additional discriminatory disabilities.

The Child Welfare League of America, Inc. is a national organization with 380 local child welfare agency affiliates, devoted to securing public understanding, interest and support of programs that enhance the well-being of children and that insure the

protection and services they require. Its interest in this case arises from its concern that Connecticut, instead of assuring protection and services to those families most in need and so enhancing the well-being of children, threatens the mother-child relationship and the security of the child.

The Connecticut Child Welfare Association is a statewide organization dedicated to child advocacy and the advancement of child welfare for all children in Connecticut. As a child advocate in Connecticut, it has special concerns about the issue raised in this case. The Association regards the statute as likely to chill applications for public aid for children entitled to such aid, and as creating discriminatory, cruel state action against children who are poor and illegitimate.

The Consortium on Early Childbearing and Child Rearing is a cooperative organization devoted to research utilization and information sharing geared to helping communities improve services to adolescent school-age mothers, young fathers and their infants. The issues raised in this case are vital to working with young parents and their infants. Since the Connecticut statute would impede constructive efforts to help such parents and children and would discriminate against many of them by reason of poverty and illegitimacy, the Consortium is interested in this case.

The Council of Jewish Federations and Welfare Funds is the membership association and joint instrument of 225 local Jewish Federations, Welfare Funds and Community Councils in the United States and Canada. These organizations provide a wide range of services to parents and children. Through the Council they work together on common regional, national and

overseas problems. The Council is deeply concerned with the effects of this Statute upon services to young families most in need and the new discriminatory barriers to the rendering of such services which are raised by it.

The Day Care and Child Development Council of America, Inc. is a national organization devoted to promoting high standards and adequate provision of day care for all children who need and could benefit from it. The issues in this case are of special concern to the council because their resolution will determine whether a state can be permitted to intervene in the development of a child by removal of his sole guardian at the time in his life when maternal care is most crucial.

The Family Service Association of America is a membership federation of more than 340 community supported and community serving family agencies, each of which exists to aid families and individuals with personal or social needs and to advocate action for the needs of families under stress. The Association's interest in this case stems from its commitment to aid families with such needs. No group is more in need than that represented by the children in this case.

The Interreligious Foundation for Community Organization is an organization engaged in the field of social action to effect sound public policy in regard to social issues. It supports this challenge to the Connecticut statute because it regards the statute as unjust and oppressive and as leading to a cycle of poverty through denial of support to children in their natural homes.

The National Association for the Advancement of the Colored People is a non-profit association representing the interests of approximately 500,000 members in 1,800 branches throughout the United States. Since 1909, the NAACP has sought to establish and protect the civil rights of minority citizens. In this respect, the NAACP has often appeared before the Supreme Court as amicus in cases involving school desegregation, employment, voting rights, jury selection, capital punishment and other cases fundamental human rights. It joins in this brief because this case threatens the civil rights of mothers and their children to remain together and not be subjected to threats of separation by reasons of poverty, illegitimacy or race.

The NAACP Legal Defense and Educational Fund, Inc. is a non-profit corporation incorporated under the laws of the State of New York in 1939. It was formed to assist blacks in securing their constitutional rights by the prosecution of lawsuits. Its purposes include rendering legal aid gratituously to blacks, suffering injustice by reason of race, who are unable, on account of poverty, to employ legal counsel on their own behalf. For many years, its attorneys have represented parties in this Court and participated as amici in this Court in cases involving many facets of law, including the rights of welfare recipient.s The present case is of particular importance to the Legal Defense Fund becaus it centers around a state effort to place a stigmatizing burden upon a group of children most of whom are poor and non-white.

The National Association of Social Workers is the professional association of social workers with 52,000 members in 172 chapters. Its purposes include the improvement of social conditions as well as activities

designed to strengthen the profession. The issues in this case are of importance to the NASW because they reflect a trend to further impair the development and treatment of illegitimate children who are poor and in need of services.

The National Conference of Catholic Charities is the central national organization for Catholic charities in the United States. It is joined by two of its affiliates, Catholic Charities of Norwich, Connecticut and Catholic Charities of Bridgeport, Connecticut. This case is of importance to the Catholic Charities because the Connecticut statute threatens the only family unit for a child born out of wedlock and may deprive the child of the care and protection of his mother. Such action violates the sanctity of the family.

The National Council of Churches of Christ in the United States of America is a federation of 33 Protestant and Eastern Orthodox denominations, comprising 139,962 churches with 42,278,990 members. The NCC has long been concerned that everyone should be able to enjoy a decent standard of living without regard to race, color or religion and has expressed distress at various restrictions place upon public assistance programs such as that embodied in the Connecticut statute challenged in this case.

The National Federation of Settlements and Neighborhood Centers is the national association of 447 centers in 90 cities and 20 states, founded in 1911 by Jane Addams. Settlement houses work for community change affecting families, individuals, community groups and their social environment. As heirs to the pioneering work of Jane Addams, they are concerned with achieving constructive community

change. This case is of great importance to the Federation because the Connecticut statute constitutes harsh, hostile and discriminatory coercion of those who are poor and powerless.

The National Urban League, Inc. is a national organization, with affiliates in 98 cities, devoted to assisting urban communities with minority group problems that develop out of segregation, discrimination and neglect in overcrowded population areas. This case is of great significance to the League because the Connecticut statute places further burdens on those already faced with problems that result from segregation, discrimination and neglect of their social needs. The League views this statute as one more shocking attempt to chill welfare applications from the poor.

The Puerto Rican Legal Defense and Education Fund, Inc. is an organization devoted to protecting and promoting the legal rights of Americans of Puerto Rican background. Its interest in this case is due to the steady and mounting attacks on indigent Puerto Ricans which seek to deprive them of entitlement to aid under Federal law. It sees the Connecticut statute as an effort to chill applications for welfare.

The Salvation Army is a religious and charitable organization carrying out a variety of programs designed to promote the spiritual life and material well-being of all people. Its interest in this case stems from its view that the Connecticut statute is an attempt to avoid and cast aside illegitimate children if they are poor and need public aid. It regards this approach to human problems as violating the right of all inhabitants of this land to assistance when in need.

The United Church of Christ, Board of Homeland Missions, Health and Welfare Division is the central agent for the United Church of Christ's activities in the fields of health and welfare. Its concern is for improvement of the health and welfare of all people, with special concern for poor and minority groups. It opposes any state action like Connecticut Statute 52-440b which separates or segregates those who are entitled to assistance or seeks to demand of recipients of aid conditions that are humiliating or coercive.

The United Presbyterian Church in the United States of America, Health and Welfare Development Unit, is the central organization for agencies and individuals primarily interested in issues of health, education or welfare. The membership includes community centers and neighborhood houses, and health agencies—including hospitals, nursing and convalescent homes, out-patient clinics, chaplaincies, services to children and families, and services to the aging. Its interest in this case springs out of concern for services to children and their families. The Connecticut statute undermines equal access to services, segregates and coerces applicants and denies full access to benefits to poor children.

The Young Women's Christian Association of the United States of America is a national organization with 1,463,000 individual members and 6,800 local units. Its common goal is that of helping all women and girls make their full contribution to society. Its interest in this case stems from its opposition to the imposition of conditions of aid on those who need it on the ground of birth, status and poverty. It believes that the Connecticut statute fails to promote the welfare of all children and equal justice for all under the law.

This case raises serious questions as to the constitutional right of illegitimate children to be raised by their natural mothers. The above organizations, dedicated to the welfare of children, believe that this brief will be of assistance to the Court in its consideration of the issues involved.

Respectfully submitted,

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INTRODUCTION

We present this brief in support of the appellants and with their consent.

We rely on the appellants' treatment of this Court's jurisdiction, of the facts as to the individual appellants and of the opinions below.

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment of the United States Constitution forbids the enforcement of Connecticut Statute 52-440b absent individual consideration of the actual best interests of the children affected by it.

2. Whether the Fourteenth Amendment of the United States Constitution forbids the discriminatory enforcement of Connecticut Statute 52-440b against only one class of people, based on their indigency.

3. Whether the Fourteenth Amendment of the United States Constitution forbids the imposition of the penalty of incarceration, pursuant to Connecticut Statute 52-440b, where the judge has no discretion, because of the defendants' indigency, to give less than the maximum penalty.

4. Whether the Eighth and Fourteenth Amendments of the United States Constitution forbid the incarceration of the mothers of illegitimate children, pursuant to Connecticut Statute 52-440b, as cruel, unusual and disproportionate punishment of these children.

INTEREST OF THE AMICI

The Interest of the Amici is set out, *supra.*, in the Motion for Leave to File this brief.

STATEMENT OF THE CASE

Connecticut Statute Section 52-440b[1] forces the

[1] Section 52-440b reads:

§ 52-440b. Compelling disclosure of name of putative father and institution of action.

a. If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such

mother of an illegitimate child to disclose to the state the name of her child's natural father, and then to prosecute a paternity action against him. If the mother fails to comply either with the duty to disclose or prosecute, she is punishable under the statute for contempt of court. The penalties provided by the statute are a fine of not more than $200 and/or imprisonment for not more than one year.

This statute is the outgrowth of two prior unsuccessful attempts by the state of Connecticut to coerce mothers of illegitimate children who are receiving welfare to name and prosecute the children's natural fathers.

Connecticut's initial attempt was a welfare regulation which provided that if a mother failed to make disclosure of the father's name to the Welfare Department she would be denied Aid to Families with Dependent Children (hereafter AFDC) benefits for her children. This was challenged on the grounds that punishing the children in order to coerce compliance by the mother violated the terms of the AFDC program and the federal Constitution. A three-judge federal district court, reaching only the statutory issue, declared that this provision conflicted with federal eligi-

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child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

b. Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

bility criteria established by Congress for the AFDC program and permanently enjoined its operation. *Doe* v. *Shapiro,* 302 F. Supp. 761 (D. Conn.), *appeal dismissed,* 396 U.S. 488.

The state Welfare Department changed its regulation after the decision in *Shapiro* to provide that if the mother failed to make disclosure, her own AFDC benefits would be cut off. The *Shapiro* court enjoined the new regulation and held that its enforcement constituted contempt of the prior injunction because it had the same harmful effect on the children. *Doe* v. *Harder,* 310 F.Supp. 302 (D. Conn.), *appeal dismissed,* 399 U.S. 902.

Connecticut did not give up. It passed the present statute which differs from the old schemes in two apparent respects. First, it appears to apply across the board to all mothers of illegitimate children, not just AFDC recipients. In fact, however, this appearance is illusory. The state has applied this statute only to mothers receiving public assistance, and has (as set forth more fully below) forced mothers who have refused to disclose the name of their children's father to choose between relinquishing AFDC benefits and going to jail.

Second, the new statute purports to punish the mother, not the child, and to offer the court a continuum of possible punishments, from modest fines to imprisonment (or both). This, too, is illusory. Since the statute has been applied only to mothers receiving public assistance, the choice of a fine is meaningless because they have no money to pay. The *de facto* sanction of the statute as applied to them, then, is imprisonment. Thus while purporting to punish only the

mother, the statute in this case has the devastatingly perverse effect of making the illegitimate child an orphan, a far more serious result than the prior schemes that were invalidated.

The psychological consequences of such separation to the child could be enormous. Specialists in child development and psychiatric medicine are in unanimous agreement that maternal deprivation could stunt the child's psychological, emotional and social development.

The state of Connecticut claims two underlying purposes for this statute: (1) protection of the state's coffers by mitigating the financial burdens imposed in supporting impoverished illegitimate children; and (2) protection of the children's best interests by establishing their paternity "so that they might enjoy the long term psychological and economic advantages to be gained thereby." (*Doe* v. *Norton,* 365 F. Supp. at 73.) Yet the statutory scheme applies (1) even though there is no possibility of financial recovery from the father, for example, where the statute of limitations has run, and (2) regardless of proof that disclosure of the father's name in a given circumstance may be utterly contrary to the best interest of the child. Indeed, neither the mother nor the child are allowed an opportunity under the statute to make such a showing. The statute simply presumes that coercion of the mother and disclosure of the father's name will always serve the child's best interest.

The Children's Defense Fund and twenty-seven other organizations committed to the welfare of children, concerned with the cruel treatment of indigent illegitimate children under this staute, offer this brief in support of the appellants' constitutional challenge to

it. The Amici focus particularly on the constitutional rights *of the children* which are abridged by this statute. They demonstrate herein that § 52-450 is unconstitutional because (a) it creates a false, but irrebutable, presumption that forced disclosure or incarceration of the mother is in the child's best interest; (b) it denies the illegitimate children of impoverished mothers the equal protection of the laws; and (c) it imposes upon such children a cruel, unusual and disproportionate punishment.

SUMMARY OF ARGUMENT

This is a case which touches a most fundamental interest embodied in the concept of liberty protected by the Fourteenth Amendment: the right of a child to remain with and be raised by his parents. To be sure, that Amendment does not totally bar the states from legislating in this area. But this is a case in which the state has gone too far.

The state of Connecticut has enacted a statute purporting to serve the best interests of illegitimate children by establishing their paternity through legal action. Its means of enforcement—coercion and/or incarceration of the child's mother—demonstrates that it is precisely the child's interest that the statute destroys.

The Statute does not permit a case-by-case review of the child's best interests but operates on the basis of an irrebutable presumption that the child's interests will be served best by the coercion and incarceration of his mother as a means of establishing paternity. The state's insistence on this presumption, despite persuasive evidence that it is harmful to the children in whose name it is used, is unconstitutional.

Moreover, the state applies this statute in cases where no legitimate interest of the child (or the state) can conceivably be served by it. To coerce or incarcerate the child's mother so indiscriminately is a violation of the child's rights under the Fourteenth Amendment.

Connecticut statute 52-440b, as drafted, applies to all mothers of illegitimate children. It is not applied as written; the state prosecutes only the mothers of illegitimate children who are receiving public assistance. The unequal impact of the manner of enforcement is a violation of the children's rights to equal protection of the laws. This violation is compounded by the fact that the statute operates against the poor. The Connecticut legislature has established penalties for the mother's refusal to disclose the father's name—from fines to imprisonment. Where the mother is poor, the judge cannot exact a fine and must send her to prison. Thus the child's mother is singled out because she is poor and incarcerated because she is poor all in violation of the Fourteenth Amendment.

Finally, the incarceration of mothers of illegitimate children works an obvious punishment upon these children. This punishment is severe and without justification and it violates these children's rights to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments.

I. THE ENFORCEMENT OF CONNECTICUT STATUTE 52-440b, WITHOUT CAREFUL INDIVIDUAL CONSIDERATION OF THE ACTUAL BEST INTERESTS OF THE CHILDREN INVOLVED, DEPRIVES ILLEGITIMATE CHILDREN OF THE FUNDAMENTAL RIGHTS AND LIBERTIES GUARANTEED TO THEM BY THE FOURTEENTH AMENDMENT.

A. THE RIGHT OF A CHILD TO BE RAISED BY HIS NATURAL PARENTS IS A FUNDAMENTAL RIGHT IMPLICIT IN THE CONCEPT OF LIBERTY THAT MAY NOT BE DEPRIVED WITHOUT DUE PROCESS.

The due process clause of the Fourteenth Amendment is a constitutional guarantee of respect for those personal immunities which are "so rooted in the traditions and conscience of our people to be ranked as fundamental." *Snyder* v. *Massachusetts,* 291 U.S. 97, 105 (Cardozo, J.).

The interest of parents and children [2] in establishing and maintaining a coherent, private family unit, free from domination by the state, is indisputably a paramount and protected interest.[3]

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[2] Of course, most cases which deal with the fundamental interests of family life were brought by and for parents to protect their rights to privacy in family life and child rearing. The court has dealt with the issues as they regard these parental rights. Within the purview of both *Meyer* v. *Nebraska, infra.* and *Pierce* v. *Society of Sisters, infra.* however, are expressions consistent with a holding that a child has a fundamental interest in the protection of his family as well. *Cf. In re Gault,* 387 U.S. 1, which states:

> [N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone. [where the state directly abridges a child's rights,] it is necessary that the basic requirements of due process and fairness be satisfied.

[3] *Cleveland Board of Education* v. *La Fleur,* 94 S.Ct. 791; *Roe* v. *Wade,* 410 U.S. 155; *Loving* v. *Virginia,* 388 U.S. 1, 12; *Griswold* v. *Connecticut,* 381 U.S. 479; *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Meyer* v. *Nebraska,* 262 U.S. 390. *Cf. United States* v. *Orito,* 413 U.S. 139, 142; *Prince* v. *Massachusetts,* 321 U.S. 158, 165; *Skinner* v. *Oklahoma,* 316 U.S 535.

B. WHILE THE STATES ARE NOT PRECLUDED FROM LEGISLATING IN AREAS WHICH ABRIDGE SOME FAMILY INTERESTS, THEY MAY DO SO ONLY IF THE INTEREST TO BE SERVED CONCERNS THE ACTUAL WELFARE OF CHILDREN, WHERE THAT INTEREST OUTWEIGHS THE FAMILY INTEREST, AND WHERE THE LEGISLATION IS NARROWLY DRAWN TO EXPRESS ONLY LEGITIMATE STATE INTERESTS. CONNECTICUT STATUTE 52-440b MEETS NONE OF THESE CRITERIA.

Legislation restricting the liberty and privacy of family life must have a demonstrable relationship to valid state purposes:

> The essential doctrine is that these liberties may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.
>
> *Meyer* v. *Nebraska,* 262 U.S. 390, 400.

Where such legislation specifically restricts the freedom of parents to make decisions affecting the welfare of their children, the Court has imposed an even heavier burden on the state—that it demonstrate that the legislation benefits substantially the welfare of the children affected.[4]

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[4] Of course, the fiscal interest of the State is not disregarded either by the Attorney General or the court below. See State's brief at 4; *Doe* v. *Norton, supra.,* at 73 n. 10.

Neither this interest nor the interest of the state in obtaining, by the most efficient means, the name of the father [see State's brief at 1] we submit, is sufficient to establish constitutionality where the statute is detrimental to the welfare and best interests of the children it affects. Where the legislation specifically restricts the freedom of parents to make decisions affecting the welfare of their children, the Court has imposed a heavy burden on the state. The state must demonstrate not merely that the legislation serves a permissible state purpose, but it must prove that the restriction is

In addition to the Constitutional requirement that the state show a demonstrable, actual relation between the welfare of children and the challenged legislation, the state must demonstrate that the legislation is narrow enough to "express only the legitimate interests at stake." *Roe* v. *Wade,* 410 U.S. 155 (1973). Connecticut Statute Section 52-440b palpably fails to do this. It restricts the child's right to remain with his parents but does not serve the best interests of the child in all

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necessary for *and actually promotes the welfare of the children affected by it.* For example, in *Wyman* v. *James,* 400 U.S. 309, a New York statute which permits AFDC caseworkers to make unannounced home visits to determine if dependent children are being abused or neglected was upheld against the mothers' challenge that it restricted their privacy. The Court recognized the mother's rights to privacy and to make decisions for her child but it held that her rights were properly limited by this statute.

Where the state clearly proved a countervailing interest in the welfare of the child, the Court said:

> The public's interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child. The focus is on the *child,* and, further, it is on the child who is *dependent.* There is no more worthy object of the public's concern. The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights. *Wyman* v. *James, supra.* at 318.

Likewise, in *Prince* v. *Massachusetts, supra.,* the Court upheld the state's power to prevent children from selling religious newspapers on the streets at night. The Court recognized the "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents." *Id.* at 169. But it found that in this instance the family interest was outweighed by the overriding need to safeguard the children's welfare:

> [The parent claims the right to] authority in her own household in the rearing of her children . . . . Against these sacred private interests, basic in the democracy, stand the interests of society to protect the welfare of children.
>
> *Prince* v. *Massachusetts, supra.* at 165.

cases. Instead it creates an irrebuttable presumption that coercion of the mother and disclosure of the name of the putative father are in the best interests of the child, though it can be demonstrated that in many, if not most, cases the child's best interests will not be served thereby. Moreover, the statute is not drawn narrowly to express only the legitimate interests of the state in advancing each child's welfare. Rather, it applies to a wide range of situations in which the child's interests cannot conceivably be served.

(1) Unconstitutional Presumption

The state has, in its enforcement of this legislation, created an unconstitutional presumption that in all cases the child's best interests are served by the statute. It has alleged, and the District Court below found, that in all cases the primary purpose of the statute is the protection and establishment of the present and future interests of the illegitimate child 1) by establishing his paternity shortly after his birth and 2) where the mother does not volunteer the father's name, by her forced disclosure and prosecution of the father for non-support. The state argued *inter alia,*

> Aside from the matter of support, there are other valuable, existing and potential rights, that the illegitimate child has, or may have, that demand the ascertaining and establishing of his paternity.
>
> He has the potential right to share in the social security benefits and Veterans Benefits . . ., and the rights of the illegitimate child to be treated without discrimination. . . .
>
> The status of legitimacy, or of having knowledge and proof of one's paternity is a real and substantial asset to a person. . . . It means for example,

> that when an application for employment, or security clearance, or a passport or any of the myriad of forms that we file in our daily lives, are filled out by an illegitimate child, he can fill in the blanks pertaining to "FATHER" . . . .
>
> Next we must consider the question of rights that . . . may attach in the future with respect to inheritance. . . .[5]
>
> There exists . . . the valuable status of being the child of an individual male. . . . [T]o have one's paternity established by whatever suitable means, probably confers upon the child membership in a class of children who can take estates under documents of testacy.

State's brief at 5-7.

The Court below expressly accepted the state's characterization of the purpose of the statute:

> [T]he scope of this statute was intended not only to protect the state's coffers but also to establish the paternity of all illegitimate children so that they might enjoy the long-term psychological and emotional advantages to be gained thereby.
>
> *Doe* v. *Norton, supra.* at 73 n.10.

and it found that disclosure would invariably be in the interests of the child, stating that "[i]nstead of operating to the disadvantage of children born out of wedlock the statute operates to their benefit." *Id.* at 79.

This assumption is patently incorrect and is directly in conflict with the psychological and factual data available on this subject. In many, and we think most

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[5] Connecticut Statute 45-274 permits an illegitimate child to inherit from his father only if his natural parents later intermarry. Thus, an illegitimate child who establishes his paternity stands to gain nothing, under Connecticut law, from his natural father's estate.

cases, the advantages which may be gained by the identification of the putative father are far outweighed by the detrimental psychological effects on the child of coercion and/or incarceration of his natural mother.

(a) Coercion creates tension and anxiety for the mother which is harmful to her child.

Where the state compels the mother to disclose the father's name against her best judgment, it will inevitably be creating tension and anxiety for the mother. This tension and anxiety will be especially destructive for a child who is already suffering from the handicap of an absent parent. The mother may blame the child for creating strain between her and the father. Where this occurs, the harm to the child will be compounded because the anxiety felt by the mother may find its expression as anger and resentment at the child for being the cause of mother's embarrassment. Affidavit of Edward Zigler, Ph.D., Children's Exhibit 5 at 5, Joint Appendix.

(b) Forced disclosure and prosecution threatens the father-child relationship.

If the natural father has some tenuous relationship with his child, the fact of disclosure (and prosecution) by the mother may serve to permanently alienate him from both the mother and the child.

> [T]he father would avoid contact with the child which otherwise he might maintain and he might avoid contact with the mother . . . if he feels that the condition for the relationship is one required by the law in order to provide economic support for the child.

Deposition of Albert J. Solnit, M.D., Children's Exhibit 1 at 7, Joint Appendix.

(c) Identification of the father prevents the child's psychological and emotional adaptation to the fact of his illegitimacy.

Where the child does not know his father, psychological and emotional adaptation to his status of illegitimacy may actually be threatened by the disclosure of the father's identity. Child psychiatrists have found that the child can best adapt to the father's absence by "imagin[ing] a father who is larger than life to help overcome his sense of loss at not having a father present in his home. Part of this idealization includes a belief that the father wants to come live with the family and the child but for some reason is unable to. This creation of an idealized image of a father is frequently the most successful adjustment possible for a child." Affidavit of Edward Zigler, *supra.* at para. 6.

Learning the father's identity is likely to impair his psychological adjustment.

> When a child learns who his father is, he has to cope with the knowledge that his father is not ideal but may be . . . someone the child is ashamed to have for a father. In such a situation the child's self-image will be severely damaged. . . . [He] may model himself after his image of his real father [which is] likely to be bad—to coincide with society's image of men who are unwilling to support their families and desert their children. . . .
>
> The child's self-image will also be severely damaged . . . where [the knowledge of his father's identity] brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the child is unworthy in some way or because his father hates him.

Affidavit of Edward Zigler, *supra.* at para. 7, 8.

In sum, "disclosure—and particularly compelled disclosure—of the identity of a child's father . . . will in many cases be extremely destructive to the child's emotional well-being." *Id.* at para. 3.

(d) The incarceration of the mother will interfere with the child's emotional and psychological development.

In cases where the mother refuses to disclose the father's name,[6] and where she is incarcerated pursuant to Section 52-440b, the potential for psychological and emotional harm to the child is greatly increased.

The statute of limitations applicable to paternity actions is three years.[7] Thus, in most cases, the child whose mother is incarcerated will be under three years of age. Leading child development authorities have shown that maternal deprivation during the crucial

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[6] And where, as in Connecticut, the reasons for her failure to do so are not considered. See *infra.* at 21-26.

[7] Connecticut Statute Section 52-440a provides, in pertinent part,

> No petition [to establish paternity] shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later. . . .

The transcripts of hearings in the Connecticut Circuit Court, Ninth Circuit show that, in all cases, the children were under three years of age.

Date of Hearing			
April 2, 1973	Maria Harcega	born 2/16/72	1 year + 6 weeks
	Ann Abascal		18 months
	Susan Bilodeau	1/12/71	26 months
	Cynthia Iverson	7/ 4/72	9 months
May 7, 1973	Phyllis Clarke	1/ 3/73	4 months
Oct. 2, 1973	Sharon Burr	3/31/71	2 years + 6 months
	Rosalyn Carr	11/ 1/71	1 year + 5 months

[The complete transcripts of these hearings are attached as Appendix A hereto.]

early years of a child's life may be psychologically and emotionally disastrous:

> Disruptions of continuity have different consequences for different ages. In infancy . . . any change in routine leads to food refusals, digestive upsets, sleeping difficulties and crying . . . Change of the caretaking person for infants and toddlers further affects the course of their emotional development. Their attachments at these ages are as thoroughly upset by separations as they are effectively promoted by the uninterrupted presence of a familiar adult. *When infants and young children find themselves abandoned by the parent, they not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful.* They tend to grow up as persons who lack warmth in their contacts with others . . . . *Adults who as children suffered from disruptions in continuity may themselves treat their children as they were treated—continuing a cycle costly both for a new generation of children as well as for society itself.* (emphasis added.)

Freud, Goldstein and Solnit, *Beyond the Best Interests of the Child* at 31-34 (emphasis added).

Among the growth processess of the child which may suffer the greatest damage are those which society and the state should do most to engender and support, e.g., educational ability, cognitive development and the capacity to work productively in society:

> Certain findings point to the likelihood that maternal deprivation has a specially adverse effect on particular processes. Among intellectual processes, the most vulnerable seem to be language and abstraction. Among personality processes, the

> most vulnerable seem to be those underlying the ability to establish and maintain deep and meaningful interpersonal relations and the ability to control impulses in the interests of long range goals.

Bowlby, *Child Care and the Growth of Love* at 219.[8]

The court below erroneously stated that enforcement of Section 52-440b will not harm the child because the consequences of maternal deprivation will be mitigated

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[8] In cases where the child has no other parent (as here) even more severe consequences may result. In a study done for the United Nations, a psychiatrist found that of children in orphanages who received adequate health and nutritional care, many young children died or became mentally retarded without any medical explanation. The psychiatrist concluded that this syndrome, anaclitic depression, was caused by the deprivation of the child's mother:

> We discovered that all children in our sample population who developed this syndrome had one experience in common: at some point between the sixth and eighth month of life all were deprived of the mother. This separation took place for unavoidable external administrative reasons.

Spitz, *The First Year of Life* at 271.

For other discussions of the harmful psychological and emotional effects on children of maternal deprivation, see White, *Federal Programs for Young Children;* Maccoby and Masters, "Attachment and Dependency." *Manual of Child Phychology,* at 73-157; Bowlby, *Attachment and Loss;* Williams, *Children Who Break Down in Foster Homes: A Psychological Study of Patterns of Personality Growth in Grossly Deprived Children,* 2 J. Child Psychol. Psychiat. 5; Yarrow, *Maternal Deprivation: Toward an Empirical and Conceptual Re-evaluation,* 58 Psychol. Bull. 459; Rheingold & Bayley, *The Later Effects of an Experimental Modification of Mothering,* 30 Child Develpm. 363; Scott, *The Effects of Separation from the Mother in Early Life,* 1 Lancet 624; Ainsworth & Boston; *Psychodiagnostic Assessments of a Child After Prolonged Separation in Early Childhood,* 25 Brit. J. Med. Psychol. 170; Glueck & Glueck, *Unraveling Juvenile Delinquency;* Spitz, "Anaclitic Depression," *Psychoanalytic Study of the Child,* Vol. 2 at 313.

(but not prevented) by the state's obligation to provide for alternate care for these children. Even so,[9] the effects of foster care are demonstrably not beneficial for all children. Psychological studies of children in foster care homes and in institutions demonstrate that young children who are separated from their mothers suffer acute distress regardless of the "circumstance and quality of substitute care." [10]

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[9] In fact, the transcripts of state cases show that the state refuses to make arrangements for children whose mothers are to be detained. See, for example, the transcript in *Welfare Commissioner* v. *Rosalyn Carr* (Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973, Hon. Eli L. Cramer, Judge.) In pertinent part, it reads:

THE COURT: You be back here two weeks from today . . . , Mrs. Carr, and you have arrangements made if you do not disclose at that time, you have arrangments made to take care of your child.

See also the Transcript in *Welfare Commissioner* v. *Elizabeth Stone* (Circuit Court, 1st Circuit, Norwalk, Connecticut, January 28, 1974, Hon. G. Sarsfield Ford, Judge.)

THE COURT: I accept her declining to identify the punitive [sic] father. I will continue the matter until next Monday at two o'clock . . . I find her refusal, through you, is an act of contempt at this time. Rather than place her in custody at this time I will give her until next Monday at two o'clock to purge herself from contempt. . . .

I would suggest she get everything in order by next Monday . . . if she is going to be continuing in this position and I have to restrain her, that someone is able to take care of her child and so forth.

MR. GERLIN: And if there is no one?

THE COURT: Then that will be her problem.

Appendix A.

[10] J. Robertson, "Young Children in Brief Separation", *The Psychoanalytic Study of the Child*, Vol. 26 at 265.

There is nothing in the record to show that quality foster care is available for these children and it is unlikely that they will have access to the most desirable foster or temporary care. The women affected by the statute are poor; their immediate relatives are not likely to have the financial resources to be able to care for an additional child during the mother's absence. The children will have to be placed, in all probability, in institutions and outside their natural families.

There is substantial risk that under the Connecticut law the fracture of the mother-child relationship will never be healed. Connecticut law requires the Court to place guardianship of a child whose mother is incarcerated in the Department of Welfare until the child becomes 18 or until the order of guardianship is revoked.[11] For the mother to regain guardianship, she must prove that it is in the best interest of the child to be returned to her custody.[12] The fact of her imprisonment, with the probable loss of the home she had with her child, would hardly prepare her to meet this burden. Studies have shown that the image of foster care as a temporary source oriented to short-term treatment of a family or child is no longer correct. Instead as things stand now, the majority of children who enter foster care are likely to spend their growing years there. This has been shown to be especially true of children who are poor or belong to minority groups, the objects of the Connecticut statute, so that their place-

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[11] Connecticut Statute Section 17-62d.

[12] Connecticut Statute Section 17-62f.

ment of them in foster care or institutions carries with it an additional danger of permanent separation from their natural families:

> Poverty and living arrangements operate against early return to natural parents . . . It is as if foster care can well be temporary only if the child or parents are tenacious in being visible . . . the desired placement seems least likely to be carried out for the poorest families . . . Children in foster care take their chances; poorer children take a greater chance.[13]

Where it is clear or can be shown that the child's best interests vary with the facts of each family situation, the state cannot constitutionally create an irrebuttable presumption that coerced disclosure or imprisonment is in the best interest of all children.

Assistant Attorney General Higgins stated at oral argument that Connecticut presumes that the enforcement of Section 52-440b will be in the best interests of children in all cases and the state should not allow the mother or the child [14] to rebut this presumption in specific instances.[15]

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[13] Wiltse, *Foster Care*, 1973: *A Reappraisal*, Public Welfare at at 7.

[14] In other instances where the *actual* harm or benefit to the child is considered relevant by the State, Connecticut statutes provide for the appointment of an attorney to represent the child's interests. See, e.g., Connecticut Statute Section 46-26b.

[15] In his argument to the District Court, the State Assistant Attorney General was asked to clarify this point:

> JUDGE NEWMAN: Do you take the position that in the contempt proceeding the woman has the right to present facts bearing on whether disclosure is in the child's interest? . . .

In fact, Mr. Higgins has accurately described the actual practice of Circuit Court judges as they have applied this statute throughout Connecticut. Excerpts from the transcripts of two cases decided under Section 52-440b illustrate the practice:

The case of *Welfare Commissioner* v. *Elizabeth Stone,* Circuit Court, 1st Circuit, Norwalk, Connecticut, January 28, 1974, Hon. G. Sarsfield Ford, Judge:

MR. GERLIN: Your Honor, we have a situation here, I think, where the law is hard . . . [t]he father of this child is

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Can she litigate that issue in the contempt hearing?

MR. HIGGINS: No, I don't believe that she can, under the statute.

JUDGE NEWMAN: Well, when you say the Circuit Court judge will exercise his discretion what will he exercise it on if she can't litigate that issue?

MR. HIGGINS: He would litigate it on whether or not she would be held liable to the imposition of one of the penalties provided.

JUDGE NEWMAN: Yes. But what issue would he have to resolve to get to that ultimate consequence?

MR. HIGGINS: Well, the issue as in the case I stated, that it was impossible for her to disclose, [that she didn't know the father's name].

JUDGE NEWMAN: That is one. That is really standard—knowledge. What about the more current problem of desirability of disclosure? . . . Would you oppose them litigating that?

MR. HIGGINS: I would oppose them litigating that issue of desirability.

Transcript of the Argument before District Court at 43-45.

a man who has been arrested for narcotics violations, for assault and battery, apparently has been diagnosed as a schizophrenic . . . Now my client is terrified of this man . . . I believe the court should have discretion to examine . . . the Statute should be read so the court does have discretion. The law, I think, is hard.

THE COURT: It may even be harsh. I assume by reason of this citation that . . . [t]here is a child born which is living with her and is the recipient of Welfare Assistance . . . And to date Elizabeth Stone has failed to voluntarily disclose the name of the punitive (sic) father . . . Then under the Statute . . . I will order that she disclose the name of the punitive father . . . I have compassion for her too, but I can't let that shade my obligation to my oath to do what this law says I should do.

The case of *Welfare Commissioner* v. *Robin Janes,* Circuit Court, 16th Circuit, West Hartford, Connecticut, November 27, 1973, Hon. Henry J. Goldberg, Judge:

MR. ALDEN: [D]o you want to tell your Honor why you refused to [disclose the name of the father]?

MS. JANES: He's threatened my life and my daughter's life. He's threatened me physically with his own hands and he has come after me with a gun and he has been on drugs charges and he's also threatened my daughter's life with a gun and I feel that

it's just a danger to me and my daughter's life to state his name ....

THE COURT: I simply want to tell you that we have a statute which in essence states that the mother of a child, your situation, born out of wedlock, may be cited . . . to disclose who the father is and if that person refuses to disclose the putative father, that person may be found in contempt of court ....

MS. JANES: Well, . . . I'm afraid of him and I'm going to be getting married in the Spring and my fiancee is going to be adopting my daughter and I think it would be harmful to state his name right now because I'm afraid of him.

THE COURT: [T]he statute does give the court the authority to compel you to name the father and if you still refuse, the court here wouldn't have any alternative except to fine you up to $200 and imprison you for not more than one year or both.[16]

Such application collides with the long standing view of this court that

> the wholesale condemnation of a class to . . . an invasion of personal liberty, without opportunity

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[16] Appendix A. See also affidavit of *Frances Foe*, Plaintiff, who was cited for contempt despite the fact that:

> "the child was conceived either under incestuous conditions or by a person who is emotionally unstable and whose whereabouts [were] unknown to her."

Affidavit of Frances Foe, para. 3(b).

to any individual to show that his is not the case which would justify resort to it . . . is lacking in the first principles of due process.

Skinner v. *Oklahoma,* 316 U.S. 535, 544-45 (Stone, C.J., concurring). *Vlandis* v. *Kline,* 93 S.Ct. 2230; *Stanley* v. *Illinois,* 405 U.S. 645; *Bell* v. *Burson,* 402 U.S. 535; *Carrington* v. *Rash,* 380 U.S. 89.

A similar case to this was presented in *Stanley* v. *Illinois.* There, an Illinois statute purportedly operated "to protect the moral, emotional, mental and physical welfare of the minor and the best interests of the community." [17] It provided that upon the death of their mother, illegitimate children would be declared dependents and be placed in foster care. The state refused to allow the natural father to prove his fitness to have custody of his children. This court held that the state could not, consistently with due process requirements, presume that the child's best interests would not be served by giving his father custody. It stated:

> [T]he State has made its interest quite plain. Illinois has declared that the aim of the Juvenile Court Act is to protect the welfare of the minor. . . . But we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible. . . . We observed that the State registers no gain toward its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit parent, the State spites its own articulated goals when it needlessly separates him from his family. . . .

[17] *Stanley* v. *Illinois, supra.* at 1213; compare State's argument in *Doe* v. *Norton,* 356 F. Supp. 202, 207 (D. Conn.) and *Doe* v. *Norton, supra.* at 73 n.10.

> It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children . . .
>
> *Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to . . . formalities, it needlessly risks running roughshod over the important interests of both parent and child . . . . It therefore cannot stand.* (emphasis added)

Stanley v. *Illinois, supra.* at 1213-15.

Under the standards established by the Court in *Stanley,* Connecticut's enforcement of Section 52-440b unconstitutionally deprives illegitimate children of their right to remain with their natural parent without the individual determination required by due process of law. First, the state categorically assumes that the child's best interests lie in coercion or incarceration of his mother despite significant persuasive evidence that this is demonstrably false in some cases. *Supra.* at 12-21. Second, the state has impermissibly refused to allow consideration of the individualized particular interests of each child in each case. *Supra.* at 21-24.

As in *Stanley,* the state of Connecticut "insists on presuming rather than proving the child's interests" (*Id.* at 1216) despite strong indications that they may not be served by uniform enforcement of Section 52-440b. And as in *Stanley,* the due process clause requires a different approach.

(2) The Statute is Unconstitutionally Over-Inclusive.

The state has unconstitutionally failde to narrow the application of this statute to express only the legitimate state interests at stake in prosecuting paternity actions. Section 52-440b applies to all mothers of illegitimate children regardless of whether

a) the father can be identified;[18]

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[18] While the State Attorney General stated at argument that a mother would not be punished where she could not identify the father, the application of this statute in specific cases has demonstrated that this is not so. See, for example, the case of *Welfare Commissioner* v. *Rosayln Carr*, Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973, Hon. Eli L. Cramer, Judge:

THE COURT: I am giving you fair warning, Mrs. Carr, that I don't want any games played. Disclose the name. You are under oath. No you have five minutes, I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know . . . [H]aving to be here is a gross intrusion of my privacy.

THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you . . . You be back here two weeks from today, Mrs. Carr, and you have arrange-

b) the statute of limitations for paternity actions has run;

c) the child has a formal acknowledgement of paternity; or

d) the state has another, less intrusive means of establishing the identity of the child's father.

In cases where the father cannot be identified, and the state's enforcement is futile, the child's interest cannot be served in anyway. Thus, the potential harm to the child of coercion and/or imprisonment of his mother clearly outweighs any benefit to the state. Indeed the import of the statute seems purely punitive in these cases. Similarly, in cases where the statute of limitations has run, no paternity action may be instituted by either the mother or the state. Thus, the assertion of state's fiscal interest in obtaining support money is nullified and the child's interest in legally establishing paternity for future benefits is nonexistent.

Where the child has formal acknowledgment of paternity, the child's interest in receiving support or future financial benefits can be enforced by him at his election. This Court has indicated that an illegitimate child's recovery of benefits due his father does not depend on proof that there has been a formal court adjudication of paternity. *Weber* v. *Aetna Casualty Co.*, 406 U.S. 164.

Moreover, the Connecticut legislature could demonstrate its professed claims of concern for illegitimate

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ments made if you do not disclose at that time, you have arrangements made to take care of your child.

Appendix A.

children by legislating away any formal disability of a child to recover benefits from his natural father where credible proof of paternity exists.

Where the state has another, less intrusive means of establishing the identity of the child's father, it should use it rather than be permitted to coerce and/or incarcerate the mothers of young children. The identity of the father can, in some cases, be obtained by mere examination of the birth certificate. This seems a simple step to take. But the state has conceded that it does no independent investigation to determine the identity of the natural father other than to question (and coerce) the mother.[19] It should be required to do so.

Even if the state could show its present methods are more efficient, which we doubt, this statute, as applied, still could not stand:

> [T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say

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[19] In the deposition of John A. Nadolski, an employee of the Welfare Department of Connecticut, whose responsibility was to establish the paternity of illegitimate children in his district, Mr. Nadolski described the extent of his investigation as follows:

> [Knowledge of the existence of an illegitimate child would come to my attention] at the time of application, through an intake worker, or during an annual review of existing welfare mothers. . . .
>
> [T]he welfare worker would ask the mother who the father of the child is. If at that time the [mother] refuses to name the father . . . I would . . . ask the mother who the father of the child was. I would inform her that under welfare laws, if she refuses to name the father of the child we can . . . cite her to appear before a judge of the Circuit Court . . . . If she still refuses to name the father of the child, I would turn it over to an attorney . . . to cite her.

Deposition of John A. Nadolski, Children's Exhibit 3, Joint Appendix at 4-6. *Accord*, Deposition of Joseph Mancini, Children's Exhibit 4, Joint Appendix at 4-7.

> of the Bill of Rights in general, and the Due Process clause in particular, that they were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency. . . .

Stanley v. *Illinois, supra.* at 1215.

Where, as here, there exists severe threat of harm to children from coercion and incarceration of their mothers, the state must demonstrate that it has used all other reasonable means to establish paternity prior to embarking on such a drastic course.

> The public interest in this particular segment of the area of assistance to the unfortunate is protection and aid for the dependent child whose family requires such aid for that child. The focus is on the *child,* and, further, it is on the child who is *dependent.* There is no more worthy object of the public's concern. The dependent child's needs are paramount.

Wyman v. *James,* 400 U.S. 309, 318 (1971).

II. CONNECTICUT STATUTE SECTION 52-440b, AS ENFORCED, CONSTITUTES INDIVIDEOUS DISCRIMINATION ON THE BASIS OF WEALTH AGAINST INDIGENT ILLEGITIMATE CHILDREN IN VIOLATION OF THEIR RIGHT TO EQUAL PROTECTION OF THE LAWS IN THAT

A. THE STATUTE IS APPLIED ONLY TO MOTHERS OF ILLEGITIMATE CHILDREN WHO ARE RECEIVING PUBLIC ASSISTANCE.

AND

B. THE SENTENCING JUDGE HAS NO DISCRETION TO MITIGATE OR GIVE LESS THAN THE MAXIMUM PENALTY TO AN INDIGENT DEFENDANT.

. THE COURT BELOW ERRONEOUSLY REJECTED THE PLAINTIFF'S CLAIM THAT THE STATUTE UNCONSTITUTIONALLY APPLIES ONLY TO THE CLASS OF MOTHERS OF ILLEGITIMATE CHILDREN WHO ARE RECEIVING PUBLIC ASSISTANCE.

The Court held:

> This statute which imposes a duty upon an unwed mother to disclose the name of the putative father of her child does not distinguish between unwed mothers who receive public assistance and those who do not. The statute permits the compelled disclosure of the name of the putative father from any mother of an illegitimate child.

)oe v. *Norton, supra.* at 81.

This statute, while neutral on its face, has in fact een applied only to mothers of welfare recipients. ndeed, the state could not cite a single case brought nder Section 52-440b against a mother not receiving ublic assistance. Transcript of Argument below at 0-41.

This statute was passed by the legislature only after he repeated efforts of the state welfare department to stablish administrative procedures for identifying the utative father were rejected. *Doe* v. *Norton, supra.* at 1. As the State conceded in its brief,

> For a long time prior to the decision in *Doe* v. *Shapiro,* 302 F.Supp 767 (D. Conn.), .and *Doe* v. *Harder,* 310 F.Supp. 302 (D. Conn.) the defendant welfare commissioner handled the problem of the non-disclosing mother of an illegitimate child by terminating the public assistance benefits of the mother and the child. After this decision, the defendant commenced to cut off benefits to the mother but not the child. These procedures were held invalid by the Federal courts basically on the

> theory that by so acting the commissioner was adding a condition to AFDC eligibility not provided for in the Federal Social Security Act, and, in effect, was visiting the sins of the mother upon the child. . . .
>
> The severance of welfare benefits having been precluded as a means of ascertaining the identity of the father of a illegitimate child, the legislature determined that it would be proper to cause *these women* to be cited in before the Circuit court to disclose the name of the putative father (emphasis added).

State's brief below at 1-3.

Contempt cases heard subsequently show conclusively that State judges have refused to apply the statute to mothers who have discontinued public assistance or who agree to discontinue it rather than disclose the name of the father.

In the case of *Welfare Commissioner* v. *Susan Bilodeau* (Circuit Court, 9th Circuit, Middletown, Connecticut, April 2, 1973 Hon. Nicholas F. Armentano, Judge.) the judge held the mother could not be cited for contempt unless she was receiving welfare:

MR. CARTA:	Are you willing to disclose the name of the father?
THE DEFENDANT:	No . . . .
MR. CARTA:	Do you know what the statute says? Anyone who refuses to disclose the name of the father could be held in contempt of court . . . Do you understand that?
THE DEFENDANT:	Yes.

MR. CARTA:	And the child is presently a recipient of the State welfare?
THE DEFENDANT:	No . . . You know I'm working.
THE COURT:	[C]heck whether this child is a recipient now . . . Check that because she would have a right to refuse, . . . if the child is not presently a recipient.

The following colloquy occurred in the case of *Welfare Commissioner* v. *Rosalyn Carr,* (Circuit Court, 9th Circuit, Middletown, Connecticut, October 2, 1973):

THE COURT:	Well, I'm going to order you to disclose [the father's name].
THE DEFENDANT:	I feel that it is . . . a gross intrusion of my privacy.
THE COURT:	If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.
THE DEFENDANT:	All right. I will do that if that is what the Court wants, then that is finished.[20]

This court consistently has held that a statute which appears on its face to make a rational classification is unconstitutional if, without a rational basis, it is

[20] Bilodeau transcript at 6-10; Carr transcript at 27-28. Appendix A. Thus, disclosure has become equivalent to another eligibility requirement and should be prohibited by the prior decisions in *Doe* v. *Shapiro, supra.*, and *Doe* v. *Harder, supra.*

actually applied only to one class of individuals. In *Yick Wo* v. *Hopkins,* 118 U.S. 356, it was stated:

> Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Yick Wo v. *Hopkins, supra.* at 573-74.

This principle has been applied to cases where the discriminatory application of the statute was based on the invidious classification of indigency. *Boddie* v. *Connecticut,* 401 U.S. 220; *Williams* v. *Illinois,* 399 U.S. 391; *Harper* v. *Virginia Board of Elections,* 383 U.S. 663; *Griffin* v. *Illinois,* 351 U.S. 12. *Cf. Shapiro* v. *Thompson,* 394 U.S. 618.[21] It should be applied here.

B. THE STATUTE CREATES AN INVIDIOUS DISCRIMINATION AGAINST MOTHERS OF CHILDREN RECEIVING PUBLIC ASSISTANCE BECAUSE IT VESTS NO DISCRETION IN THE JUDGE TO PUNISH INDIGENTS EXCEPT BY IMPRISONMENT.

In his concurring opinion in the District Court, Judge Newman stated that a balance should be struck

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[21] Of course, classification by indigency implies classification by race. In the separation of children from their natural families, now threatened by Connecticut Statute 52-440b, one finds a disproportionate percentage of children from poor non-white families. The 1970 Census shows that the population of Connecticut is six percent black and ninety-three percent white. United States Bureau of the Census, Characteristics of the Population, 1970, Vol. 1, Pt. 8., Connecticut, Table 18 at 39. However, of the 8,600 recipient families of AFDC in Connecticut, 5,400 were black. HEW, "Characteristics of Recipients" (1971).

in each case between the mother's "constitutionally protected interest . . . in making decisions to maintain the harmony of her family unit" and the state's interest in enforcement of the father's obligations to support his child. He concluded that Section 52-440b permits such a balance to be made: [22]

> The statute accords the state judges ample discretion to determine the appropriateness of contempt remedies in specific cases.

Doe v. *Norton, supra.* at 86.

But the statute is applied only to welfare mothers. Thus discretion allowed by the legislation as to stringency of penalties is nullified by the fact that the mothers cannot afford to pay fines. A judge, faced with a recalcitrant welfare mother, must either disregard his duty under Section 52-440b or give the maximum penalty prescribed imprisonment.[23]

The Constitution should not permit the arbitrary imposition of jail sentences on indigents where the legislature has provided for the imposition of a fine under appropriate circumstances. To impose prison sentences in such cases is an invidious discrimination based on wealth which constitutes a denial of equal protection

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[22] But see *supra.* at 21-26.

[23] See *Morris* v. *Schoonfield,* 399 U.S. 508, 509 (White, J., concurring). In fact, state judges have indicated that where any penalty will be imposed on the mothers, it will be a jail term. See Transcript of *Welfare Commissioner* v. *Robin Janes, supra.* at 27. (Appendix A).

of the law. Cf. *Tate* v. *Short,* 401 U.S. 318; *Williams* v. *Illinois, supra.; Frazier* v. *Jordan,* 457 F.2d 726 (CA 5) (Wisdom, J.).

III. INCARCERATION OF THE MOTHERS OF ILLEGITIMATE CHILDREN, PURSUANT TO CONNECTICUT STATUTE 52-440b, CONSTITUTES CRUEL, UNUSUAL AND DISPROPORTIONATE PUNISHMENT OF THESE CHILDREN IN VIOLATION OF THEIR RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS.

A. THE COURT SHOULD LOOK BEYOND THE STATE'S ASSERTION THAT IT IS ONLY PUNISHING THE MOTHER BY THE ENFORCEMENT OF THIS STATUTE[24] CONNECTICUT IS PUNISHING THE CHILD.

As shown earlier, the incarceration of the mother will have its most drastic and harmful effects upon the psychological and emotional well-being of the child. *Supra.* at 13-21. And the child who will suffer in these circumstances has power to neither rebut the state's presumption that the statute works to his best interests nor to control his mother's behavior so as to prevent her incarceration. Where the greatest punishment falls on the child, the Court must look beyond the nominal designation of the mother as "defendant" to examine whether its potential impact on the child is consistent with the Eighth Amendment. See *Taylor* v. *Martin,* 330 F.Supp. 85, 89 (N.D. Cal.) *aff'd. sub nom, Carleson* v. *Taylor,* 404 U.S. 980; *Doe* v. *Harder,* 310 F.Supp. 302, 303 (D. Conn.), *appeal dismissed,* 399 U.S. 902.

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[24] The amici in no way intend to derogate the plaintiffs' argument that they are unconstitutionally subjected to this statute because their right to remain silent is protected by the First, Fifth, Ninth and Fourteenth Amendments. Rather, we assert that even if the court rejects the plaintiffs' right to privacy in this matter, it must hold that punishment by incarceration is unconstitutional because it constitutes disproportionate and cruel punishment of children.

B. PUNISHMENT OF THE CHILD IS UNCONSTITUTIONAL IN THIS CASE BECAUSE (1) IT CONSTITUTES PUNISHMENT FOR THE "STATUS" OF BEING AN ILLEGITIMATE CHILD OF A WOMAN RECEIVING WELFARE ASSISTANCE; (2) THE CHILD'S CONDUCT IS NOT MORALLY BLAMEWORTHY; AND (3) A CIVIL CONTEMPT SANCTION, WHICH DOES NOT ALLOW THE CHILD CONTROL OVER HIS MOTHER'S RELEASE IS A DISPROPORTIONATE PUNISHMENT.

This Court has held that punishment may not be imposed, consistent with the Eighth Amendment, upon persons who have not committed any criminal act. *Robinson* v. *California,* 370 U.S. 661. *Cf. Powell* v. *Texas,* 392 U.S. 531.

Where the child has committed no criminal act but is deprived of his mother solely because he is the illegitimate child of a mother receiving public assistance, the child is being punished for the accident of his birth, a result not tolerable under the Eighth Amendment.

Further, the child, unlike the mother, has no control over the outcome of the disclosure proceeding or over the length of incarceration: He does not "carry the keys to [his] prison in [his] own pocket." *Doe* v. *Norton, supra.* at 83. It is that very element which has been held to be the necessary justification for punishment for civil contempt. *Shillitani* v. *United States,* 384 U.S. 364.

Second, the state may not constitutionally punish a person whose conduct is not morally blameworthy. *Morissette* v. *United States,* 342 U.S. 246. In the instant case, the child's conduct is morally blameless. Indeed, it is not considered at all. Nor can the mother's conduct be deemed conclusively blameworthy where Connecticut refuses to allow her to present any defenses for her refusal to disclose the father's name.

See *supra.* at 21-26. Indeed, her concern for her child's best interests may dictate her refusal to cooperate.

Finally, the punishment is disproportionate. In the state's view the child stands to benefit from the knowledge of his father's name and from future possible benefits which he may gain from the knowledge of his paternity. In contrast, where the child cannot benefit, because of the father's unavailability (*supra.* at 27-29), because of psychological reasons (*supra.* at 13-21) or because his mother refuses to disclose, the state has seen fit to deprive the child of the most substantial benefit he has—the right to remain with his mother, the only available caring parent. This extreme, harsh punishment far outweighs the seriousness of the mother's offense and it cannot be imposed. *Trop* v. *Dulles,* 356 U.S. 84; *Weems* v. *United States,* 217 U.S. 349.

CONCLUSION

Under the Connecticut statute only illegitimate children dependent on public assistance are threatened by the loss of their mothers. These children are poor and largly non-white.

The fundamental rights of the child in this class are violated by the statute which subjects him to removal from his sole caring parent and to the psychological and emotional harm which this removal may engender. For this class alone, the statute undermines established standards for the separation of natural families based both on knowledge and law, which require that the best interests of the child must in all cases be considered paramount. Such state action violates constitutional guarantees and requires the

most careful scrutiny by this Court since those who are most powerless are subject to the deprivation of their constitutional rights.

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APPENDIX

APPENDIX A

CIRCUIT COURT

1ST CIRCUIT, AT NORWALK

January 28, 1974

WELFARE COMMISSIONER

VS.

ELIZABETH STONE

BEFORE: HON. G. SARSFIELD FORD, Judge

APPEARANCES: ALLAN P. CRAMER, ESQ.
38 West State Street
Norwalk, Conn.

ROBERT GERLIN, ESQ.
Keeler Building
Wilton, Conn.

2 THE COURT: Welfare Commissioner versus Elizabeth Stone.

MR. CRAMER: Your Honor, I believe the defendant is here. We have asked her to name the punitive (sic) father in the situation.

THE COURT: You are here in behalf of the Commissioner?

MR. CRAMER: Correct, your Honor.

THE COURT: All right.

MR. GERLIN: Your Honor, we have a situation here, I think, where the law is hard. The law is very hard in a situation where it is deserving of compassion. Now, we have sought compassion from the Court before and we have received it and the matter was put off for a prolonged period while I was able to appeal to the Commissioner of Welfare. Frankly, I have done that. I have received communication from him and I was stressing sympathy. The Commissioner of Welfare is saying he has no discretion in this matter. Well, I tend to disagree. I think he does. However, if he says he doesn't wish to exercise it—

Now, I will very briefly go over the facts and explain to you where we are now.

The father of this child is a man who has been arrested for narcotics violations, for assault and battery, apparently has been diagnosed as a schizophrenic, and has not
3 been in the State of Connecticut for two and a half to three years. He is a fugitive from Connecticut right now. He can do the State of Connecticut no good. Now, my client is terrified of this man. He has come here the last time he was in the area. It is a very serious situation. My client is organizing herself well. She works part time, does not have a job but has been working part time while the child goes to nursery school and acquires public assistance. She does not admit on the legal record this man is the father of the child. She doesn't want him to have a reason to come back.

Now, she tells me if the law insists she speak the name of this child's father that she will leave the Welfare roll.

THE COURT: She has that choice.

MR. GERLIN: I have tried to convince her because she requires the assistance to stay on Welfare and reveal the name of this man. She insists she will not do so. She won't even tell me who it is. I would like a short continuance of the matter for me to try to convince her to reveal the name of the father or to resign from the Welfare rolls.

MR. CRAMER: Your Honor, if I may comment. First of all I don't think she has the alternative.

THE COURT: Not now since she has accepted the Welfare.

MR. GERLIN: I am not arguing that point.

4 MR. CRAMER: So even if she does go off, I think she has a clear obligation to reveal the name.

THE COURT: Well, a preliminary finding must be made.

MR. CRAMER: May I speak, your Honor?

THE COURT: Yes.

MR. CRAMER: I think the problem here which I certainly, you know, personally feel compassion for, is possibly a bit greater than the defendant or her attorney think it is, or I

should say, it is a lesser problem than they think it is. My understanding is if this is true, nothing would be done. Obviously, if they don't know where he is, there wouldn't be any objection. Obviously, we can't control when he will show up. But there has been no cooperation here and cooperation is really the purpose of the legislature enactment.

I woud just add, we can't control when he might show up but if he did, the Welfare Department at that point would like to—

MR. GERLIN: The man is a fugitive. I believe frankly, this a problem. I believe the Court should have discretion to examine. It does not under the Statute. I believe the Statute should be read so the Court does have discretion. The law, I think is hard.

THE COURT: It may even be harsh. I assume by reason of this citation which places Elizabeth Stone before the Court that the underlying factors have been met. There is a child born which is living with her and is the recipient of Welfare assistance.

MR. CRAMER: No objection to that, is there?

MR. GERLIN: That is correct.

THE COURT: And to date Elizabeth Stone has failed to voluntarily disclose the name of the punitive father.

MR. GERLIN: Correct.

THE COURT: Then under the Statute, number one, I have to deny your request and number two, under the Statute, I will order that she disclose the name of the punitive father.

MR. GERLIN: We can't have a week, your Honor, for her to resign the Welfare rolls and perhaps the State in its wisdom would leave her alone if she did do that?

THE COURT: I don't know if it would make any difference.

MR. CRAMER: I can assure you it won't.

THE COURT: She was a recipient already. She chose assistance at the time the aid was sought, as I would see it and you are presumed to know the law.

MR. GERLIN: The law has changed. I believe it was attacked constitutionally. It has been amended.

THE COURT: Probably. It could very well be true
6 but I am powerless to do anything. I have compassion for her too, but I can't let that shade my obligation to my oath to do what this law says I should do. The legislature is the place to attack it, not here. As far as I see it.

MR. GERLIN: And if Elizabeth refuses she is in contempt?

THE COURT: She would be, I assume.

MR. GERLIN: I would very much like—I think the situation is so serious, I think that we should have some time to consider what she is to do about the situation. She has a child. She might even go to jail if she refuses to speak.

THE COURT: Well, that will come up when she refuses to speak.

MR. GERLIN: Are you going to require her presence on the stand today or—

MR. CRAMER: If your Honor please, if it would make any difference to Counsel or be of any assistance to them, I have the necessary forms acknowledging paternity if they wished nothing be put on the court record at this time. It could be done that way in the alternative.

THE COURT: If you want to accept Counselor's offer it is perfectly all right with me. The alternative is, I would ask the young lady to disclose the name right here and now.

7 MR. GERLIN: May we have a short recess?

THE COURT: I am going to take up another matter and you may discuss it with your client but be assured that I will follow the law.

MR. GERLIN: Yes, your Honor.

(Recessed and then resumed.)

MR. GERLIN: Your Honor, my client tells me that when she went on Welfare she was asked for the name of the father and she refused to provide it and they said, "Okay,

you don't have to give it." A couple of times after than they again requested the name and then said, "Okay, you don't have to." Now she brings up the point, the law was changed. I guess it was in 1971. Now she sees herself after they have been on Welfare and now they say, "You have to tell." or as Mr. Cramer suggests, pay back the money. Of course, that is ridiculous. She has a three year old infant child.

If in fact the Welfare Department did upon that number of occasions, your Honor, tell her she did not have to tell and now comes and tells her you must tell, it must seem—there must be an estoppel why she—why they would mislead her to detriment of rights. Now they are lowering the boom on what is, in fact, a defenseless person, that is a poor one. And, I think maybe we should—

THE COURT: Multiply that a thousand times. Where are we? There are a thousand girls in the same situation.

8 MR. GERLIN: Are they terrified of the father or are they trying to cheat the State of Connecticut?

THE COURT: How can we test the mental attitude?

MR. GERLIN: We can talk to the applicant and question her.

THE COURT: I am not allowed to. The law is clear. I have indicated to you, I have directed your client to disclose the name.

MR. GERLIN: Now, I wonder what the rights of appeal are in this matter because I think there may be a question as to whether the State has estopped itself from exercising its right.

THE COURT: You are looking to me for advice?

MR. GERLIN: No, I am not.

THE COURT: I have directed you to disclose the name. I am asking you to direct that inquiry to your client and report to us forthwith.

MR. GERLIN: I have spoken to her quite extensively and I find no alternative but to say she declines to provide that

information and I take exception to the State's insistence on that information on the grounds the State is estopped from asserting its rights to have misled her a number of times in accepting welfare while not revealing the name of the punitive father.

THE COURT: All right. I accept her declining to identify the punitive father. I will continue the matter until next Monday at two o'clock. I would ask she concern herself with her position and to be back here at two o'clock next Monday. I find her refusal, through you, is an act of contempt at this time. Rather than place her in custody at this time, I will give her until next Monday at two o'clock to purge herself from contempt. If she does not do it by next Monday at two o'clock, I will take it up.

MR. GERLIN: Thank you, your Honor.

THE COURT: I would suggest she get everything in order by next Monday if she is going to be continuing in this position and I have to restrain her, that someone is able to take care of her child and so forth.

MR. GERLIN: And if there is no one?

THE COURT: Then that will be her problem.

MR. GERLIN: Thank you, your Honor.

(Adjourned.)

THE COURT: State of Connecticut and Elizabeth Stone.

MR. CRAMER: Your Honor, I just received a memoranda of law in this matter so if I don't have a memoranda today to respond it is only because I wasn't aware there would be one to respond to.

MR. GERLIN: Well, I told the secretary on Friday there was a time period and I finished it this morning. Your Honor—

THE COURT: Yes?

MR. GERLIN: Part of our appeal to you today, your Honor, is for a stay on the basis that the case of Doe v.

Norton, the 3rd District Court case is presently on appeal to the Supreme Court of the United States on the constitutional issues. Today I have with me Frank Cochran of the Connecticut Civil Liberties Union who is counselor for the plaintiff or the appellant in the class action that is now before the Supreme Court of the United States. He will be available if we have any questions on that case, its present status of any of the constitutional issues raised here. He will be glad to help us.

My client is here. We are prepared to take testimony on any points that you want us to take testimony on or I can run through the papers now and point out to you
3 what each point that we are raising is or discuss it with you if you would like, however you care to proceed.

Now, I will be very frank with your Honor. When last her I didn't envision getting into the position where we had to in effect, fully litigate this matter because I felt that since my client is attempting a desire to work and become self-supporting and plans to go off the child assistance, the matter would become moot. However, last week you ordered her to speak the name of the father of the child and Counsel indicated that the State's position would probably be that they might want to go after him for past payment irrespective of whether or not she has left or still is receiving assistance. I felt it necessary to protect her interests which I believe are very deep and very important that we had to prepare a full case on the matter including a memoranda of law and motions to dismiss.

Mr. Cramer: Your Honor, I don't think I have read the memoranda of law and I don't think anything raised in it his Honor is not aware of. I think it is important to keep in mind that the Federal Court for the District of Connecticut has clearly decided there is no right in this situation and the majority so ruled. I believe, Mr. Gerlin, is relying on concurring opinion by Judge Newman which I
4 believe was Judge Newman's opinion only and I still

don't think there is anything in here in Judge Newman's opinion which gives any support here.

Also, Judge Henebry's decision, attached to the memoranda of law, as I read it has absolutely no relevance here. It is a totally different situation where a person in fact, the basis of Judge Henebry's decision was in fact the State was not supporting the child, in fact the voluntary payment made by the husband in this situation and the payment going to the mother, in fact for the mother and not the child and therefore, the Statute did not apply. So, I don't really see anything here which gives Mr. Gerlin anything to contest this claim.

I must say that it would seem that under the circumstances cited here, this claim could be very prevalent. I don't think any mother in a situation like this wishes to reveal the name of the father. On the other hand, there are interests in the State that have been a legal enactment with this court, as I see it, is bound to follow and under the circumstances Miss Stone is forced to follow that legislative enactment and her argument if it is an argument, should not be with this court which is bound to be with legislative enactment and I would respectfully ask you—

THE COURT: I took an oath to enforce the law. Now, we are here under 52-440b. I want to know whether you have any feeling that this, at this present point in time is [e]ffective in any way at all?

MR. CRAMER: No, I don't your Honor.

THE COURT: Can you tell me why you feel that you are on solid ground to move as you have?

MR. GERLIN: Well, I will respond to Counselor's points first.

THE COURT: No, respond to mine first.

MR. GERLIN: Judge Henebry's and the District Courts both say you have discretion to exercise of what this Statute calls for. Therefore, you can hear or are empowered to hear testimony or to take testimony on the questions that are raised with respect to the rights of

privacy, the constitutional right to privacy that this mother has with respect to her child's rearing and her sexual life. Judge Henebry makes that very clear in his opinion as to the majority in footnote fourteen, not just in the concurring opinions, and I have quoted from that on page three of my memorandum. It states, both opinions state, that what must be weighed are the interests of the state against the interest of privacy of the mother and child. Here we have told the Court and we are prepared to support it, we have supported with and are prepared with testi-
6 mony that the punitive father has not been seen in two and one half years that this man is a drug addict, a thief, and a schizophrenic.

Also we show your Honor that the Statutes of Limitations well may have run on bringing a paternity action.

THE COURT: That may be but is that effective against the order of this Court asking her to disclose the name and failure to do so in turn because this Court had to find her in contempt?

MR. GERLIN: Yes, your Honor, because you are empowered to listen to what she has to say, listen to what Counsel has to say and to determine whether or not the sanction or the discretion of the Statute and if she refuses to obey the directions under the Statute whether the sanctions provided under the Statute should be applied in this case. You are empowered to do that. Now, we raise other issues. We raise constitutional issues. They are all on appeal to the Supreme Court. I can say she has resigned from Welfare and is no longer receiving payment. Therefore, the State can no further be damaged if it has been in any way by ither staying or certainly not by dismissing it because if she was out of the State, the Statute—

7 THE COURT: All I have is a memoranda for a motion to dismiss. Is there a motion?

MR. GERLIN: I filed it on Friday.

THE COURT: Then I should have it, shouldn't I?

MR. GERLIN: Yes, there is also an affidavit with the motion.

MR. CRAMER: Your Honor, if I may quote just briefly from Judge Blumenfield's decision on privacy, as Counsel has indicated, and in fact in the majority opinion, I believe that Judge Blumenfield's comments were as follows, there was a claim, apparently made that there was invasion of privacy, forcing a wife to testify against her husband. The relationship which these unwed mothers seek to protect from disclosure is emphatically different. There is no privilege to withhold testimony of a parent. I think Judge Blumenfield clearly disposed of it and I think your Honor, the case has been stated. I feel, under the circumstances, and fortunately I think this case has got to be differentiated from Judge Henebry's decision where your Honor, it doesn't rise or fall at all on anything. I think your Honor can recognize there is a reluctance to testify for fear of action by the punitive father.

8 THE COURT: I will rule on it today. I haven't had an opportunity to read this, of course you just gave me the memoranda and I haven't read them so I will take a short reces and I am going to read these. When I read them I am going to come out and I will have your client who I already have in contempt, take the stand and I will inquire of her myself.

MR. GERLIN: As I recall you ordered her to return today and speak but that you have not held her in contempt.

THE COURT: I clearly found her in contempt last week. I said I made a finding that she was in contempt and I will give you until two o'clock next Monday to purge herself but I would like to inquire of her myself.

MR. GERLIN: There is another possible suggestion.

THE COURT: No, this is what I am going to do so we will pass it for now and I will take it up later and I would like to read this and come back and I will move from that point.

MR. GERLIN: Fine.

(Passed and then resumed.)

THE COURT: This case is pending in the Supreme Court of the United States.

MR. COCHRAN: The appeal was documented in January, I believe it was January 4th. No action to my knowledge has been taken on it to date. The jurisdictional statement has been submitted. The Court has neither noted probable jurisdiction nor made any other rulings on the case.

THE COURT: I have read your motion and I have read the memoranda. I deny the motion to dismiss and I deny the request for stay.

Now, to inquire of you—

MR. GERLIN: Your Honor, excuse me, has she been put under oath?

THE COURT: I am going to tell her why and when I finish we will have her sworn and I will take it from there.

I am going to inquire of you what your situation is, what you have done, what you are trying to do, and I will advise you that you have to— The Statute requires you to answer the Court. That is different than answering everybody else because I have a power to hold you in contempt. If I am not satisfied with the way the matter is developing I can, by your merely asking, or the failure to answer, I can have you remanded into custody and stay here at my wish until I see fit to release you with a term not exceeding a year. Okay? I will ask the clerk to put you under oath and I am going to ask you what the background of this matter is. Okay? Not only with respect to the name of the punitive father but to any other matters that I may inquire.

MR. GERLIN: We will be entitled to inquire as well?

THE COURT: I don't know what reason you would have.

MR. GERLIN: We would like to make a factual record if we may.

THE COURT: I would suggest that you see what develops then we will take it up at that time. As I said to you, I

have read your memoranda, read the motion and I will take it from there, rule on it and take it from there.

11 **Elizabeth Stone** having been duly sworn was examined and testified as follows:

BY THE COURT:

Q. Miss Stone, at one time or another, were you inquired of by the Welfare Department as to the parentage of your offspring? A. Yes.

Q. How long ago was that? A. The first time they asked me was when I applied and I refused to do it and they told me I was not required to.

Q. Who told you that? A. The Welfare Department.

Q. Who in particular? A. I don't know, one of the social workers at the office.

Q. This was at the time you applied for assistance? A. Before I went on Welfare.

Q. Were you afforded assistance at the time? A. After my daughter was born. I was only eligible until her birth.

Q. And you were both eligible after the birth? A. After the birth but I applied before she was born.

Q. Your daughter was born and then thereafter were you again inquired of by the Welfare Department as to the father of the child? A. Yes.

Q. And when was that? A. I don't know exactly but I believe it was once a year or a couple of times and
12 again they told me I did not have to name the father.

Q. Who told you that? A. Social workers.

Q. Do you know who they were? A. I don't know off hand but I do have a record, papers that they sent me. They have a person who reviews my case.

MR. GERLIN: May it please the Court, could the witness raise her voice?

THE COURT: They would like to hear you.

Q. So, that you indicated at least three times someone in the Welfare Department told you there was no need for you to disclose the name of the punitive father? A. Yes.

Q. What is your age? A. Twenty-four.

Q. What? A. Twenty-four.

Q. And how old is your child? A. Three and a half.

Q. And where is the father of your child? A. I don't know.

Q. When is the last time you saw him? A. Just before her first birthday which was about two years ago.

Q. Where did you see him? A. He was at my house.

Q. And you haven't seen him since then? A. No, I haven't.

13 Q. Do you know where he is? A. No, I don't.

Q. Do you have any indication? A. I have heard rumors but nothing legitimate.

Q. What is you background? A. My background?

Q. What is your education? A. I completed Wilton High School I haven't gone to college but I have been a ballet dancer since I was seven years old and—

Q. Are you employed? A. Not at the moment but I am seeking employment.

Q. When is the last time you were employed? A. About three years ago.

Q. Where do you live? A. Right now in Norwalk, 27 Rambler Avenue.

Q. Who do you live with? A. My girlfriend.

Q. Do you have a family? A. Yes, I do.

Q. Mother and father? A. Yes.

Q. Where do they live? A. Norwalk.

Q. Did they assist you? A. If I am broke they would give me a few dollars but nothing regular.

Q. Are you indebted to the Welfare Department? Do they have an account in your name which is for you personally? A. Do you mean—

Q. Have you, yourself, received benefits from the

14 Welfare Department? A. For my daughter.

Q. The answer to you is negative? To you, you have never received anything? A. I guess so, yes.

Q. And your daughter, I notice from the papers issued to the attorney, you have resigned? A. Yes.

Q. You indicate that you have resigned from Welfare benefits? A. Right.

Q. And you did that as of February 1? A. Yes.

Q. How much were you receiving? A. Two hundred and four something a month.

Q. And how long have you been receiving that? A. Since my daughter was born, 1970.

Q. You haven't seen the father of your child in three years? You have no idea of his whereabouts? A. No.

Q. Will you tell me how, with that fact in your mind, how it concerns you at this time? A. Because he has family here. I believe that if he had any excuse to come back here he would come back and this would be a good excuse for him to come back. It has taken me seven or eight years to get him out of my life, out of my mind and to set myself straight and it is appalling to me to have the thought of him coming back into my life.

Q. Well, that is a conclusion on your part, I want to know why? I want to know why? He has not returned here in three years and he has everything else that you have in your mind except for this fact that you have not told me his name and you haven't seen him in over three years.

I am concerned about it because it is a mandate of legislature for me to act and I have a right to act. As I told you last week I am going to. Now, you have to show me some justification for me to not to. In three year the same set of facts existed in your mind and have been true. He doesn't know whether or not you have disclosed the name of his—his name to anybody during the course of that time. And, his family ties were here and yet he has not seen fit to bother you, communicate with you in any way. What I would like to know is what makes you think, not just what

emotionally affects you, that there would be a change toward you if you were to comply with the Statute and tell me two words? A. Well, because—

Q. Which may never go any further than this? A. It might.

Q. We have any indication by the State, if what you said is true and it's verifiable which they are entitled to, they probably would not proceed. A. But then again they might.

Q. Well, I don't know. It is speculation. If you are telling me the truth, I have no reason to believe you are not, then what they would determine is exactly what you have been saying and if they said to you that is the end of the matter, then I would assume you are in good faith. A. They also told me I wouldn't have to give his name. Now I am in court.

16 Q. I have a Statute that says that you have to do this. Now, you are telling me on occasions this happened but you are not telling me who. You have a copy of a letter from a woman but you have to be more specific. They may be unauthorized to say that.

MR. GERLIN: Your Honor, may I speak?

THE COURT: No.

THE WITNESS: The type of person that he is, and I feel knowing him for eight years can sort of qualify me to speak on how he is. He is a schizophrenic personality. He will be one way for a certain amount of time and you have him figured out and you can react to his emotions and then he will turn around and do something completely opposite so that there is no guidance by him. You can't tell how to act. He has been violent with me. He has threatened me with a knife and in a public area and he is a drug user, which you are familiar with. It has taken me so long to get away from this type of life, this type of person, and to set myself up straight with my daughter that I don't know how else to put it into words. To sink back into that situation again is something that I don't know how to handle and by my refusing to give his name is keeping my head

above it. I am not trying to gyp the State out of anything that is coming to them. I don't like being on Welfare
17 anyway but it was something I felt was necessary in order to take care of my daughter the best way I could.

Q. There is no shame of being on Welfare. Listen, you yourself were not, your daughter was? A. My daughter.

Q. And I forget whether you responded and, if you did, what your answer was about the last time you worked? A. The actual last job I wasn't being paid for but I was getting experience as a bartender.

Q. How long ago? A. Six months or so but it wasn't actually a job. Before that I was working while I was pregnant. I was working.

Q. That was three and a half years ago? I want to know what you have been doing for the last six months? A. Raising my daughter.

Q. You have been going only on the allotment that your daughter has? A. Yes.

Q. Taking care of you, too? A. Yes.

Mr. Gerlin: Your Honor, if I might, I can see you are puzzled on this.

The Court: I haven't asked my last question yet.

Mr. Gerlin: All right.

Q. When is the last time you were asked to disclose your child's father name? A. Before these proceedings?
18 Q. Yes. A. It was the last review that I had and I think it was at least six weeks ago.

Q. No, I will ask you to disclose to me, under oath you understand that, and I will ask you to disclose to me the name of the father of your child? A. And if I refuse?

Q. If you refuse to do so you have a number of things that will happen. The best that can happen is nothing. The worst that can happen is you will be incarcerated. You can be fined. That's about it. That is your decision. A. I am not sure. I guess what I am supposed to do is if I refuse, is taking my chances. Is that what you are saying?

Q. No, you can be confined not exceeding a year and you can be fined—[t]hat is up to me. I told you last week what it would be. I gave you a week to think about it, that the situation was to purge yourself if you liked. Now, I have listened to those comments that you made. I wanted to hear them myself. A. Okay, if it is a point of going to jail, naturally I am going to tell you. I don't know if there is anything more that my lawyer has to say before we make a final decision. Can I have a minute to speak to him?

Q. No. I have an obligation to follow the Statute. It is hard but I have an obligation. It is not easy sitting up here. I have asked you under the Statute to tell me and either you tell me his name or you can remain mute and say you are never going to say it and that is up to you.

MR. GERLIN: I think I take exception to you
19 asking that question at this point on the grounds that if the testimony is her uncontradicted testimony and is accurate, there is no reason for the State to know the name of this man.

THE COURT: I don't know that but you may have an exception to my asking her that. May we ask if the State has had any evidence bearing on her credibility to produce, bearing on the witnesses credibility?

MR. CRAMER: No, I have no evidence.

THE COURT: The credibility, the problem as I see it, doesn't go to her problems as to what the father of her child is like. The problem I have is that she is here in front of me and as a judge of the Circuit Court and she is to disclose to me and if she doesn't that is contemptuous to me, to the Court. That is where I have to take action.

MR. GERLIN: Assuming the other circumstances of law—

THE COURT: There are other issues I will take into effect when she fails to answer or she answers.

MR. GERLIN: As I read Judge Henebry's decision—

THE COURT: I am not concerned with his decision. I am concerned with what I have to do. I am not unmeaningful of that decision. I am unmeaningful that she is going to

answer or is not. Depending on what she does I will have to take any action. It is very clear to me in my mind.

20 I will try to be very fair. But, I am spending a little more time than I should on this. This girl can answer or she will tell me that she is not. All right?

MR. GERLIN: When you have completed your examination, may I ask a couple of questions?

THE COURT: I have completed. I have asked her to disclose the name. If she does, she will do so soon or she will tell me she is not going to do it.

MR. GERLIN: May I inquire of her now before she is required—

MR. CRAMER: I object to any further questioning. The issue has been totally framed.

THE COURT: This is the problem. I can appreciate your problem. I can appreciate this. But, the answer to your problem is in the legislature as far as I can see it.

MR. GERLIN: As to our point on the Statute of Limitations having run on paternity actions—

THE COURT: She has already indicated he is out of the state. She returned home to have the baby.

MR. GERLIN: In so far as she is concerned he is out of the state.

THE COURT: That is his burden. That is the problem of the state in the next action. I cannot be guided by it in this action. That is my reading of the Statute and I don't think there is much to quarrel with.

21 MR. GERLIN: I only have a couple of questions to ask for the record.

THE COURT: I have asked the name and I have asked her to tell me. Either she tells me or she is not. If she tells me, depending on her answer and if you then want to ask, which, I believe go to the merits of what I do, I have no qualms and I think all your questioning and argument has to do with how I exert my discretion.

It is up to you.

THE WITNESS: May I ask you a question? If I refuse at this time to give the name, can I reverse that action at any time?

THE COURT: Well, if you refuse and I confine you, you will stay there until you purge yourself. That will be at any time you care to make delivery of that name. You will purge yourself from contempt and I will release you. You are asking me that and in so doing you get an impression as to what my ultimate judgment may be. That is one way. You can't refuse to tell me and ask me to come back tomorrow because I gave you a week to do that. I gave your Counsel a week to consider it with you and you are here.

MR. COCHRAN: May I be heard?

THE COURT: I would like to but it is just one more issue as to whether your appearance is in the file and whether you are involved in it. At this point it is not. I don't want to be unfair but he is doing a fine job.

MR. GERLIN: I would like to take exception to your refusal to let me question the defendant prior to your asking her the question.

THE COURT: You may have an exception.

THE WITNESS: Well, I don't want to go to jail so I guess there is only one thing left for me to do. Do I have to say it right here?

THE COURT: You have to tell me.

THE WITNESS: Wayne Murray.

THE COURT: I will convey it to the State and I think that will probably be the end of it.

MR. CRAMER: Your Honor, might I inquire for some further information? First, I did not hear the name.

THE COURT: I will convey it to you as she has been brought here, as I read the Statute, to disclose it to me.

MR. CRAMER: I hope, your Honor, the court reporter was able to hear it. I need a transcript of this.

THE COURT: Well, I don't think you do. All you need is the name. I will give you the name. I don't know of any necessity to give it publicly.

MR. CRAMER: I wonder if I might inquire or his Honor might inquire as to the family situation here, are they in Norwalk? So, in the event there does have to be an attempt to locate him we are familiar—

THE COURT: I have to be fair to everybody and I am trying my darndest and the Statute merely says that before the Judge of the Circuit Court you are compelled to disclose the name of the punitive father under oath.

MR. CRAMER: Your Honor, the only reason I would ask is that, obviously, it would only be for the purpose of being sure the person the State pursued is the correct person by that name.

THE COURT: Okay. Do you have anything further that you want to ask this young lady?

MR. GERLIN: Are you going to let Counsel inquire?

THE COURT: No, I don't think there is any question. The Statute told me to ask the name. She gave me the name. I will give it to you people. You will then, under the Statute, she must cooperate in the institution of a paternity action if you deem it necessary.

MR. CRAMER: Correct, your Honor.

THE COURT: I think you have made it crystal clear last week, if what this young lady was saying was true, and if it was verifiable, and it couldn't be done until you knew who it was, the State would probably realize the futility of trying to find or collect anything from him.

MR. CRAMER: But I am going on the basis of testimony she has made in the court to the effect the family is living in the town.

THE COURT: What family?

MR. CRAMER: His family.

THE COURT: She didn't say that.

MR. CRAMER: Yes, she did. May it please the court.

THE COURT: In Norwalk or her town?

MR. CRAMER: She indicated Norwalk in her testimony.

THE COURT: Are these people involved in this case? The disclosure for the record was Wayne Murray. That is the

end of my inquiry as far as I am concerned. Do you have any feelings in regard to that? That is the end of my inquiry.

MR. GERLIN: We have further questions and we would object to Counsel inquiring further into this matter. I believe the Statute has been fully met and that he not inquire further here.

THE COURT: I would tend to agree. I, too, agree and I will tell you why. Because, as I view the problem here, it is my hope that this young lady won't have any further concern with what she has conjured up, and I don't mean to say she made it up. She may have good reason to think he could cause her difficulty but I have in no way determined whether or not that was true.

Now, you have it in this file and of course, on record, signed by this girl, and if there is an arrest record and now that you know who it is—I would have no difficulty in locating and identifying that person within an hour based on the affidavit. If he was convicted in our court system and given a conditional release or was in a drug program home —You can find out these things. It would be a lot easier, I know, if she would very quietly and cooperatively tell you this but as to whether or not you have a right to inquire of her in respect to that facet of the case in open court I would sustain the objection of the young lady's counsel.

MR. CRAMER: Thank you for your patience.

CIRCUIT COURT

SIXTEENTH CIRCUIT

WEST HARTFORD

November 27, 1973

PATERNITY PETITION

CV-16-7311-13598

STATE OF CONNECTICUT

VS.

ROBIN JANES

BEFORE: Honorable Henry J. Goldberg, Judge

APPEARANCES: Richard H. Alden, Esq., For the Welfare Department

2 THE COURT: Any other case I haven't called?

MR. ALDEN: You called us and I was out in the hall. This is the matter of the State Welfare Commissioner and Robin Janes. It's one of these petitions to——

THE COURT: That's the last thing on the list, I believe. Oh, the paternity division.

MR. ALDEN: Yes.

THE COURT: All right. It had previously been marked off, it's ready.

MR. ALDEN: She is here. I can put her on the stand I suppose. The reason that she has told me she didn't want to give the name is because she is under physical threat.

THE COURT: She is what?

MR. ALDEN: She is under physical threat.

3 **Robin Janes** having been duly sworn was examined and testified as follows:

BY THE CLERK:

Q. State your name and address. A. Robin Janes, 85 Dyer Avenue, Collinsville, Connecticut.

THE COURT: May I ask how old are you?
THE WITNESS: Eighteen.
THE COURT: All right.

DIRECT EXAMINATION BY MR. ALDEN:

Q. Miss Janes, are you the mother of a child born out of wedlock on May 26? A. Yes.
Q. And, is that child on welfare? A. Yes.
Q. State of Connecticut? A. Yes.
Q. Receiving support from the State of Connecticut. And, have you been asked to disclose the name of the father of that child by the Welfare Department? A. Yes.
Q. And have you refused to do so? A. Yes.
Q. And, do you want to tell your Honor why you refused to do so? A. He's threatened my life and my daughter's life. He's threatened me physically with his own hands and he has come after me with a gun and he has been on drugs charges and he's also threatened my daughter's life with a gun and I feel that it's just a danger to me and my daughter's life to state his name.
THE COURT: What section is that?
MR. ALDEN: That's Section 52-440b. 52-440b General Statute 1971, your Honor.
THE COURT: Do you have that statute available?
MR. ALDEN: I could let you—This is from the Welfare Department, down at the bottom, 52-440b.
THE COURT: Well, what are you requesting of the court?
MR. ALDEN: Well, this is—I just learned of this particular problem about fifteen minutes ago for the first time.
THE COURT: What is that?
MR. ALDEN: I just learned of this problem that she has fifteen minutes ago. I don't have any contact at this point with somebody in the Welfare Department that can make a decision whether they want to withdraw this thing or go forward, this is the problem I had. We are required to cite them in here.
THE COURT: What is your name, again, please.
THE WITNESS: Robin Janes.

THE COURT: I simply want to tell you that we have a statute which in essence states that the mother of a child, your situation, born out of wedlock may be cited in court to appear before a judge and to disclose the paternity, to disclose who the father is and if that person refuses to disclose the putative father, that person may be found in contempt of court and the court could fine you as much as $200.00 or imprison you in jail for a year or both. So, you see, young lady, we are in a pretty serious situation.

THE WITNESS: Well, you know, I'm afraid of him and I'm going to be getting married in the Spring and my fiancee is going to be adopting my daughter and I think it would be harmful to state his name right now because of I'm afraid of him. I'm afraid he's going to disturb everything for my future this Spring. My fiance is going to school now and he will be graduating pretty soon.

THE COURT: The statute doesn't say that she shall
6 be found in contempt, it simply states that she may be found in contempt.

MR. ALDEN: One suggestion, if she is going to be married and if some other man is going to adopt this child——

THE COURT: That would resolve—

MR. ALDEN: This would resolve it. Of course this man has no obligation to support this child at this time until he adopts him but once she is off, once the child is off welfare of course that takes care of this whole problem and I don't know whether that is a possible solution for her.

THE COURT: Where do you live right now? Who do you live with?

THE WITNESS: My fiance, right now.

THE COURT: When did you expect to be married?

THE WITNESS: This Spring.

THE COURT: The Spring?

THE WITNESS: Yes.

THE COURT: We have quite a few months to go.

THE WITNESS: He will be graduating in a month and then he has to go for—

THE COURT: He is graduating from where?

7 THE WITNESS: C.P.I., Computer Processing Institute.

THE COURT: Well, Counsel, I'll consider any suggestion that you have.

MR. ALDEN: I'm thinking. Your Honor, could this matter be continued to some time so that we could make, maybe check into it a little bit more so that we could see if we could work out an arrangement with her. The department learned today of this problem, maybe we could work out something to be satisfactory for both parties, if it would be continued.

THE COURT: Well, all right. I just simply want to straighten one thing out. I think the statute speaks of may be found in contempt rather than shall. But the statute does give the court the authority to compel you to name the father and if you still refuse, the court here wouldn't have any alternative except to fine you up to $200.00 and imprison you for not more than one year or both. Now, you are requesting to have this continued?

MR. ALDEN: Yes, your Honor. I think that maybe something can be worked out.

8 THE COURT: Well, how much time has elapsed? We are not going to run into the statute of limitations?

MR. ALDEN: No, this child was born last May so a year hasn't even elapsed. We do have time.

THE COURT: All right. We'll continue this matter in other words, it may go off now and if you want to reclaim it again you can reclaim it.

MR. ALDEN: Why don't we have it go off, then.

THE COURT: You understand the matter is just simply going off at this time and subject to being brought up again to allow the state to work out something with you. All right.

MR. ALDEN: Thank you, your Honor.

* * * * * * * * * *

CIRCUIT COURT

NINTH CIRCUIT

MIDDLETOWN, CONN.

ORDER TO SHOW CAUSE

NICHOLAS NORTON, Welfare Commissioner
State of Connecticut

BEFORE:

The Honorable Nicholas F. Armentano, Judge
The Honorable Henry J. Goldberg, Judge
The Honorable Eli L. Cramer, Judge
The Honorable Daniel F. Spallone, Judge

APPEARANCES:

For the Plaintiff:

John J. Carta, Jr., Esquire
547 Main Street
Middletown, Connecticut

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OCTOBER 2, 1973. By: The Honorable Eli L. Cramer, Judge.

DECEMBER 31, 1973. By: The Honorable Daniel F. Spallone, Judge.

2 April 2, 1973, Middletown, Conn.

Before: The Honorable Nicholas F. Armentano, Judge.

THE CLERK: At this time we have those show cause orders.

THE COURT: Maria Harcega.

THE CLERK: Will you identify yourself for the record?

MR. CARTA: Attorney John J. Carta, Jr. I think you called Harcega.

THE COURT: Yes. You represent the commissioner?

MR. CARTA: Representing the Commissioner of Welfare.

THE COURT: Are you represented by counsel?

THE DEFENDANT: No.

THE COURT: You may proceed.

MR. CARTA: Basically, your Honor, I think the Statute 52-440b provides that whenever a child is born out of wedlock to a mother and that child then receives public assistance from the State of Connecticut the mother is compelled to identify the father of the child. And Maria Harcega here the respondent in this case, I guess, was requested by the State Welfare Department in New Britain and
3 refused and still continues to refuse to disclose the identity of the father of the child. That is the reason for the citation this afternoon.

THE COURT: Do you wish to put on any evidence?

MR. CARTA: Yes. The only evidence is Mrs. Harcega.

THE COURT: Are you willing to disclose the name of the father?

THE DEFENDANT: Sure.

MARIA HARCEGA, 42 Farmington Avenue, New Britain, Connecticut, called as a witness, being duly sworn by the clerk, testified as follows:

BY THE COURT:

First of all, the child's name is Sire Harcega, born February 16, 1972? A. Yes.

Q. And the child is receiving State aid? A. Yes.

Q. And you are willing to name the putative father of the child? A. Yes.

4 Q. You do so voluntarily? A. Yes.

Q. What is the name of the father? A. David Negri.

Q. Where does he reside? A. He lives in New Britain, Connecticut.

Q. What street? A. 198 Elm Street, New Britain.

Q. How old a man is he, about? A. He is twenty-five.

THE COURT: Any questions?

MR. CARTA: I have no further questions.

THE COURT: You may step down.

(Whereupon, the witness was excused and the matter was concluded.)

Ann Abascal

April 2, 1973, Middletown, Conn.

THE COURT: Ann Abascal, how old are you?

THE DEFENDANT: Twenty-five.

THE COURT: Is this lady willing to disclose the name of the father?

MR. MURPHY: Your Honor, as you probably know there is currently pending in the Federal Court an action on

5 Section 52-440b. In fact, today is the date of the hearing on the matter. I would respectfully ask this

Court to continue this matter pending the outcome of the case.

THE COURT: Is this the United States Court in Hartford?

MR. MURPHY: Yes, it is, and the issue of this case——

THE COURT: The only trouble is that their decision may not be binding on this court. I will continue it for a week or a short stay. I'll give you a short stay because we are not going to wait until that case goes to the Supreme Court of the United States. There are various district courts and may differ throughout the country on your decision. I found that on the Court of Appeals. They are not binding on my court unless I agree with it.

MR. MURPHY: I don't believe the State of Connecticut is going to be adversely affected by the continuance. The child is only eighteen months old and there is exactly a year and a half to [run] on the statute, the limitation to a paternity action. Your Honor, I would ask at least one month.

6 THE COURT: I will give you a month. But if that decision is unduly delayed, as I have said before, unless I agree with the decision it is not binding on me because it is a trial court level collection. What particular date?

THE CLERK: May 1st.

(Whereupon, the matter was continued to May 1st, 1973.)

Ann Abascal

May 7, 1973, Middletown, Conn.

MR. CARTA: Ann Abascal, your Honor, that may go off. That person is no longer receiving state aid.

THE COURT: May go off.

(Whereupon, the matter was concluded.)

Susan Bilodeau

April 2, 1973, Middletown, Conn.

MR. CARTA: Are you willing to disclose the name of the father?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

7 THE COURT: All right, take the witness stand.

SUSAN BILODEAU, 67 Collins Street, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss Bilodeau, are you the mother of a child born on January 21, 1973? A. January 12.

Q. 1973? A. 1971.

BY THE COURT:

Q. Steven Bilobeau? A. Right.

Q. When was he born? A. January 12, 1971.

BY MR. CARTA:

Q. Have you had a child born this year, January of this year? A. No.

Q. That's your only child? A. Yes.

Q. Now, Miss Bilodeau, have you been on public assistance from the State of Connecticut? A. Yes.

8 Q. Are you presently on public assistance? A. I was supposed to get a check on the first of the month and I didn't because I'm working.

Q. When did you start working? A. Last Thursday.

Q. Have you been on public assistance in the past? A. Yes.

Q. Now, have you been as a result of the birth to you of this boy? A. Yes.

Q. Now, you reside at 67 Collins Street, New Britain? A. Yes.

Q. That is still your present address? A. Yes.

Q. Have you been questioned by the Welfare Department in New Britain concerning the father of the child? A. Yes.

Q. Will you tell his Honor the identity of the father of the child? A. No.

BY THE COURT:

Q. You will not? A. No.

Q. Do you know what the statute says? Anyone
9 who refuses to disclose the name of the father could be held in contempt of court and could be fined not more than $200 and imprisoned not more than one year or both. Do you understand that? A. Yes.

Q. And you still refuse? A. Yes.

Q. And the child is presently a recipient of the State Welfare? A. No.

Q. You didn't get one the first of this month. Was it ever terminated? Did you get the last check? A. No. You know I'm working. They found me a job and I was supposed to have the check on the thirty-first.

Q. Do I understand now that you are working this child is going off welfare? A. Yes.

THE COURT: Well, why don't you check that matter out, check whether this child is a recipient now. The statute says at the present is a recipient. You ought to amend your petition.

MR. CARTA: I think at the time I received notice—you just began working?

10 THE DEFENDANT: Yes.

THE COURT: Continue this also to May first. Check that because she would have a right to refuse even if the statute is constitutional if the child is not presently a recipient.

(Whereupon, the matter was continued to May 1, 1973.)

Cynthia Iverson

April 2, 1973, Middletown, Conn.

THE COURT: Miss IVERSON, are you willing to disclose the name of the father?

THE DEFENDANT: Yes.

THE CLERK: Take the stand, please.

CYNTHIA IVERSON, 53 South High Street, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. You have a daughter Stacy Ann Iverson? A. Yes.

Q. What is the date of her birth? A. July 4th, 1972.

11 Q. And is that child presently on public assistance? A. Yes.

Q. And do you know the identity of the father? A. Yes.

Q. Are you willing to disclose that identity? A. Yes.

Q. What is the identity of the father? A. His name?

Q. Name and address. A. Jack Rust.

BY THE COURT:

Q. R-U-S-T? A. I believe it is. I'm not too positive.

Q. Is his name Jack or John? A. I don't know. I have always called him Jack.

Q. Where does he reside? A. Stratford, Connecticut. I don't know the street.

Q. Do you know how old a man he is, about? A. Thirty or thirty-one.

Q. Do you know where he is employed? A. I believe he is a fireman.

Q. He is a fireman in the Town of Stratford? A. Right.

Q. Do you know what make of car he drives? We

12 want to get the right person, that is, the State does. It's not funny. There are several people known by

the same name. If you know, that is only as an aid so that the State can locate him. A. I don't know the make of the car; its a white car. That's all I know.

MR. CARTA: Thank you, your Honor.

THE COURT: You may step down.

(Whereupon, the witness was excused and the matter was concluded.)

Linda Dunphy

May 7, 1973, Middletown, Conn.

Before: The Honorable Henry J. Goldberg, Judge.

THE COURT: Show cause in the case of Linda Dunphy.

MR. CARTA: Attorney DeFrancisco from Meriden has apparently asked for a continuance and this, and I have no objection.

THE COURT: Any particular date?

MR. CARTA: I have no particular date, your Honor. I leave that up to the Court.

THE COURT: Suppose we continue this—I don't know what date it will be. You will hear from the clerk's office.

13 MR. CARTA: I have to check with the clerk on other matters anyway, your Honor.

Lisa Hall

May 7, 1973, Middletown, Conn.

THE COURT: Lisa Hall.

MR. CARTA: Your Honor, she called me this morning and said although she had arranged to be here somehow the arrangement fell through and asked for a continuance. She stated Wednesday would be all right for her at two o'clock.

THE COURT: May ninth at two o'clock.

(On May 9, 1973, the matter went off, settled.)

(Whereupon, the matter was concluded.)

Phyllis Clarke

May 7, 1973, Middletown, Conn.

PHYLLIS CLARKE, 141 Mansfield Avenue, New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss Clarke, did you on or about January 3rd
14 of this year, did you give birth to a child? A. Yes, I did.

Q. What is the name of the child? A. Tyrone Timothy.

Q. That is the date? A. Yes.

Q. Was the child born out of wedlock; are you married? A. No, separated.

Q. Are you and the child presently receiving state aid? A. Yes.

Q. Are you, Miss Clarke, willing to identify the father of that child? A. Yes.

Q. And could we have the name of the father of the child? A. Tyrone Howard.

Q. Tyrone? A. Yes.

Q. Howard? A. Yes.

Q. H-O-W-A-R-D? A. Yes.

Q. Do you have his address? A. No.

15 Q. Do you know? A. Springfield is all I know.

Q. Springfield, Mass? A. Yes.

Q. Do you know where he is employed? A. No.

Q. Or any other fact which might help the State in obtaining his address or finding him? A. I believe it's State Street. I believe that is the street he lives but I don't know where he works.

Q. You dont' know where he works? A. No.

MR. CARTA: I have no further questions, your Honor.

THE COURT: All right, you may step down.

(Whereupon, the matter was concluded.)

Noella Cote

May 7, 1973, Middletown, Conn.

MR. CARTA: Noella Cote, your Honor, that matter may go off. She called me and already identified the father.

THE COURT: That may go off.

(Whereupon, the matter was concluded.)

16 **Sharon Burr**

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

THE COURT: The matter of Sharon Burr, 363 Main Street, Portland, Connecticut, this is an order to show cause under the provisions of Section 52-440b.

SHARON BURR, 363 Main Street, Portland, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Is that Miss Burr? A. Yes.

Q. Miss Burr, you are presently residing at 363 Main Street, Portland, Connecticut? A. Yes.

Q. And you were served with the order to show cause? A. Yes.

Q. Now, Miss Burr, did you on or about March 31, 1971, give birth to a daughter named Melisa? A. Yes.

Q. Are you able and willing to identify the father
16-A of that child? A. Yes.

Q. And could you please give me the name of the father of that child? A. Richard Coburn.

THE COURT: Spell it.

THE DEFENDANT: C-O-B-U-R-N.

THE COURT: His address.

THE DEFENDANT: It's New London.

THE COURT: You have no knowledge of the street?

THE DEFENDANT: No.

BY MR. CARTA:

Q. Could you please spell the last name? A. C-O-B-U-R-N.

Q. You say the address, as far as you know, is New London? A. New London, Connecticut.

THE COURT: You have no further questions?

MR. CARTA: I have no further questions.

THE COURT: Do you have any questions, Mr. Miller?

MR. MILLER: Your Honor, we originally had objected to the proceeding. And it was, in fact, stated sometime
17 ago based upon the that the three judge Federal panel was looking into the constitutionality of this procedure. Just recently the panel decided—do you have a copy of that decision? Do you, Mr. Carta?

MR. CARTA: I don't.

THE COURT: We took the matter up at our Circuit Court meeting but copies were not available to anyone of us. Anything further?

MR. MILLER: Yes, your Honor. The reason we objected in this particular instance——

THE COURT: Isn't it academic at this time?

MR. MILLER: No, it is not, because I would like at this point an order restraining the putative father of this child. Miss Burr for reasons which I can bring out her failure to answer questions, she is afraid Mr. Coburn will retaliate against her in any manner whatsoever in a paternity action. I would like to pass the motion to the Court, restraining order restraining him to make any effort to——

THE COURT: This isn't within the jurisdiction of it here today.

18 MR. MILLER: If the Court can compel Miss Burr to testify, I would submit that the Court has the power to protect her.

THE COURT: I have no power at this time. I see nothing in the present hearing. I would like to oblige you but I can't oblige on the basis—let me put it in the following way: If Mr. Coburn for any reasons threatens, there is a

statute on threatening which provides amply. It's a criminal statute. If you at this time would make complaint to the prosecuting attorney, I will at that time indicate to the prosecuting attorney that he should take action. I can't do anything more than that. I can't restrain him from something which he is under no execution. This is under no criminal statute. I appreciate Miss Burr's insistence with you. I see no legal power that I have to restrain something which hasn't happened and only speculative. I fully appreciate this but if there is any form of threat, it is in the nature of a criminal action and you call the police immediately. People do not have the right to threaten
19 you in any way. If in any way he comes near you or threatens you by felony, you call the police. If that isn't satisfactory, you come into the prosecutor of this court, either Mr. Kane or Mr. Natalie and they will take care of your situation.

MR. MILLER: I think that would be sufficient.

THE COURT: I can't issue a restraining order about something that hasn't happened.

MR. MILLER: Very well. Thank you.

THE COURT: Do you want the record to show the name of the putative father?

MR. MILLER: I don't think it's necessary.

THE COURT: All right. You may leave Miss Burr. You need not proceed any further. Thank you.

(Whereupon, the matter was concluded.)

Rosalyn Carr

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

ROSALYN CARR, 248 Bunker Avenue, Meriden, Connecticut, being duly sworn by the clerk, testified as follows:

20 THE COURT: Do you have counsel, Miss Carr?

THE DEFENDANT: No, I haven't.

THE COURT: Do you want counsel?

THE DEFENDANT: No, I don't believe it's necessary.

THE COURT: You don't feel it's necessary?

THE DEFENDANT: No.

THE COURT: And you wish to appear at this time on your own behalf without counsel?

THE DEFENDANT: Right.

THE COURT: And you don't wish counsel appointed for you?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to consult with a lawyer? There is a lawyer present and I can ask him to give you advice.

THE DEFENDANT: I don't believe it is necessary.

THE COURT: You don't wish a lawyer to act as a friend of the court and this gentleman is here and is very familiar with the subject if you want to discuss it for a moment. Do you want to take a few moments to discuss it?

21 MR. CARTA: I think that would be a good idea. I discussed this matter with this lady.

THE COURT: This gentleman is a lawyer who is familiar with statutes, familiar with their implications. Your name, for the record.

MR. MILLER: Donald Miller, your Honor.

THE COURT: And a member of the Middletown Bar is going to discuss this matter with you. You are not being appointed but merely as amicus curiae in this case. We will take a few minutes.

(At 2:45 o'clock a ten minute recess was taken.)

AFTER RECESS

THE CLERK: Miss Carr, do you want to step down here please?

THE COURT: She has been sworn?

THE CLERK: Yes, she has been sworn, your Honor.

BY MR. CARTA:

Q. Miss Carr, is your present address— A. My name is Mrs. Carr.

Q. I beg your pardon. Is your present address
22 248 Bunker Avenue, Meriden? A. Yes, it is.

Q. Are you presently on State aid? A. I receive $106.89 a month from the State.

Q. Mrs. Carr, on or about November 1, 1971, did you give birth to a daughter? A. On November the first, 1971, yes.

Q. Mrs. Carr, are you able today to identify or are you willing and able today to identify the father of your daughter? A. I would be willing if I knew. But I don't know so I can't.

Q. Is it your testimony therefore that you do not know? A. I do not know the name of my child's father.

Q. Mrs. Carr, the birth date of Jennifer was November 1, 1971. Is that correct? A. Yes.

Q. That would place the date of conception somewhere around January of 1970? A. Yes, January.

Q. It was January, 1971? A. Yes.

Q. Do you recall some of your male companions
23 during that period of time? A. No. I can truthfully say that I do not remember. It was an affair that I have wanted to put out of my mind and I do not know.

Q. You don't know this individual's name? A. No, I don't. I believe at the time that it was a false name.

Q. Well, do you recall the name that he did give you? A. No, I don't.

Q. Do you recall the address of this individual? A. No, I don't.

Q. Where were you living at the time? A. In Meriden at the same address that I'm at at present.

Q. Did you know that he was living in Meriden? A. No, I knew that he was living somewhere in the Wethersfield area or I was told that is where he lived.

Q. And you have no remembrance, no memory at this

time of the identity, the name of that person? A. No, I do not.

Q. Can you describe that person? A. Well, I could describe him. He was about forty-six, forty-seven, approximately five feet eleven, light complected, light hair, reddish, sort of auburn hair, and other than that I couldn't say too much about him.

24 Q. Well, Mrs. Carr, you have described him fairly well considering the length of time that has passed. Is it your testimony now—— A. Let me say this, I mean, the type of a person that is an unpleasant person, I might remember this name. I will associate a person I can recall them by sight but never be able to hook a name to that person.

Q. Mrs. Carr, how frequent, how many times did you see this person, was he a frequent companion? A. I saw him four times.

Q. And you can't remember what he was known by that or the name that he gave you? A. No, I certainly do not. I wish I did but I don't.

Q. You recall the discussion I had with you yesterday in the lawyers' lounge in this building? A. I certainly do.

Q. Didn't you indicate to me that even if you knew the name you wouldn't give the name? A. I didn't say I wouldn't give the name; I said I would consider it a gross intrusion of my privacy to have to give the name.

THE COURT: Mrs. Carr, let's stop playing games. I'm going to read to you the law under which I am pro-

25 ceeding which compels disclosure of the putative father. I will read it to you and you listen carefully. You just listen.

I will read it so it will be a matter of record. The mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found, if you know, not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under

oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian ad litem of such child, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. And this is why you are here. Now (b) any woman having been cited to appear before a judge pursuant to subsection (a),
26 fails to disclose or fails to prosecute a paternity action may be found to be in contempt of Circuit Court, fined not more than $200 and imprisoned not more than one year or both. This is an act of the Legislature and we are not here to play games. It has been upheld by the three judge panel—and I am giving you fair warning, Mrs. Carr, that I don't want any games played. Disclose the name. You are under oath. Now, you have five minutes to do it. I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: What was the name under which he was known when you went with him?

THE DEFENDANT: That I can truthfully say I do not recall either.

THE COURT: Counsel, was there some information given to you yesterday that this lady said she wouldn't disclose the name?

MR. CARTA: No, your Honor.

27 THE COURT: Did you tell this to the lawyer yesterday that you wouldn't disclose the name?

THE DEFENDANT: I didn't say I wouldn't. I said if I did know, I would consider it a gross intrusion of my privacy to have to do so.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. I do not consider it a gross

intrusion, nor the Legislature of the United States. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't, I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know.

THE COURT: You have made ambivalent statement that it is a gross intrusion on your privacy.

THE DEFENDANT: I feel that it is. Even having to be here is a gross intrusion of my privacy.

28 THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have r[illegible]ight to compel you.

THE DEFENDANT: All right. I will do that if that is what the Court wants, then that is finished.

THE COURT: That can happen later. But you are receiving aid at the present time when you were served.

MR. MILLER: May we have this continued for a week possibly? I believe Mrs. Carr does honestly at this time not remember the name of this person but perhaps in a week she might be able to find out the name of the father.

THE COURT: I will continue it a week, and if you do not disclose——

THE DEFENDANT: Your Honor, if I don't know, how can I——

THE COURT: You do know, Mrs. Carr. I don't believe you.

MR. CARTA: May that be two weeks to place that on the same day as the other ones?

THE COURT: You be back here two weeks from
29 today with the other matters at two o'clock Mrs. Carr, and you have arrangements made if you do not disclose at that time, you have arrangements made to take care of your child.

THE DEFENDANT: I have two children, your Honor.

MR. MILLER: Your Honor, am I required to be back on that day as well?

THE COURT: Do you wish this young man to act as your attorney?

MR. MILLER: I should say I am with Legal Aid, one of which Mrs. Carr does not meet.

THE COURT: Do you wish some form of representation?

THE DEFENDANT: I will get counsel.

THE COURT: You will get your own?

THE DEFENDANT: I will get counsel.

THE COURT: Continued to October 16th, two o'clock.

(Whereupon, the matter was continued to October 16, 1973.)

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

30 MR. CARTA: These matters we have gotten the required information from individuals in question so I would ask that these matters either go off or on behalf of the State withdraw these matters from any further questions.

THE COURT: I am putting the following notation, counsel, on each file which has been withdrawn: Counsel for the plaintiff appeared and stated that the requested information had been given to the Welfare Commissioner by the defendant to his satisfaction, and the matter is withdrawn from court.

MR. CARTA: That's fine, your Honor.

THE COURT: Would you give the names?

MR. CARTA: Irza Camacho, Adeline Pelletier, Patricia Gaudet, Jean Hoadly, Maureen Hunt, June Stergos, Deborah Staples.

Your Honor, the matter of Denise Russell. She is being represented by counsel. I have been in communication with them. Because this matter has not been disposed as yet, I would ask that it go over or continued to a date certain.

THE COURT: Continue it to a date certain?

31 MR. CARTA: Yes.

THE COURT: What date, Mr. Kay?

THE CLERK: A couple of weeks at two o'clock.

MR. CARTA: I have a feeling it will be disposed of.

THE COURT: October 16.

MR. CARTA: That would be fine.

Linda Dunphy, your Honor, did not answer the show cause order. She is being represented and again I have called her.

THE COURT: Continue it.

MR. CARTA: She has been served.

THE COURT: October 16.

MR. CARTA: One of the ones which isn't a part of the clerk's file hasn't been served yet.

THE CLERK: I don't want that.

(Whereupon, the matters were concluded.)

December 31, 1973, Middletown, Conn.

Before: The Honorable Daniel F. Spallone, Judge.

THE COURT: Kathleen Warren.

32 MR. CARTA: That has been disposed of, your Honor. That can go off.

THE COURT: Barbara Pino.

MR. CARTA: She is now represented by Attorney Miller, and he has asked for a continuance about two weeks and I have no objection to that.

THE COURT: Continued to January 14th, 1974. That would be two months from today.

MR. CARTA: Thank you, your Honor.

THE COURT: We are concerned with the Denise Russell matter. Keep an eye out for her and let the Court know if she shows.

(Denise Russell did not appear.)

(Whereupon, the Court adjourned.)

FILE COPY

Supreme Court, U. S.
FILED
JUL 25 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF CHILDREN OF APPELLANTS

DAVID N. ROSEN
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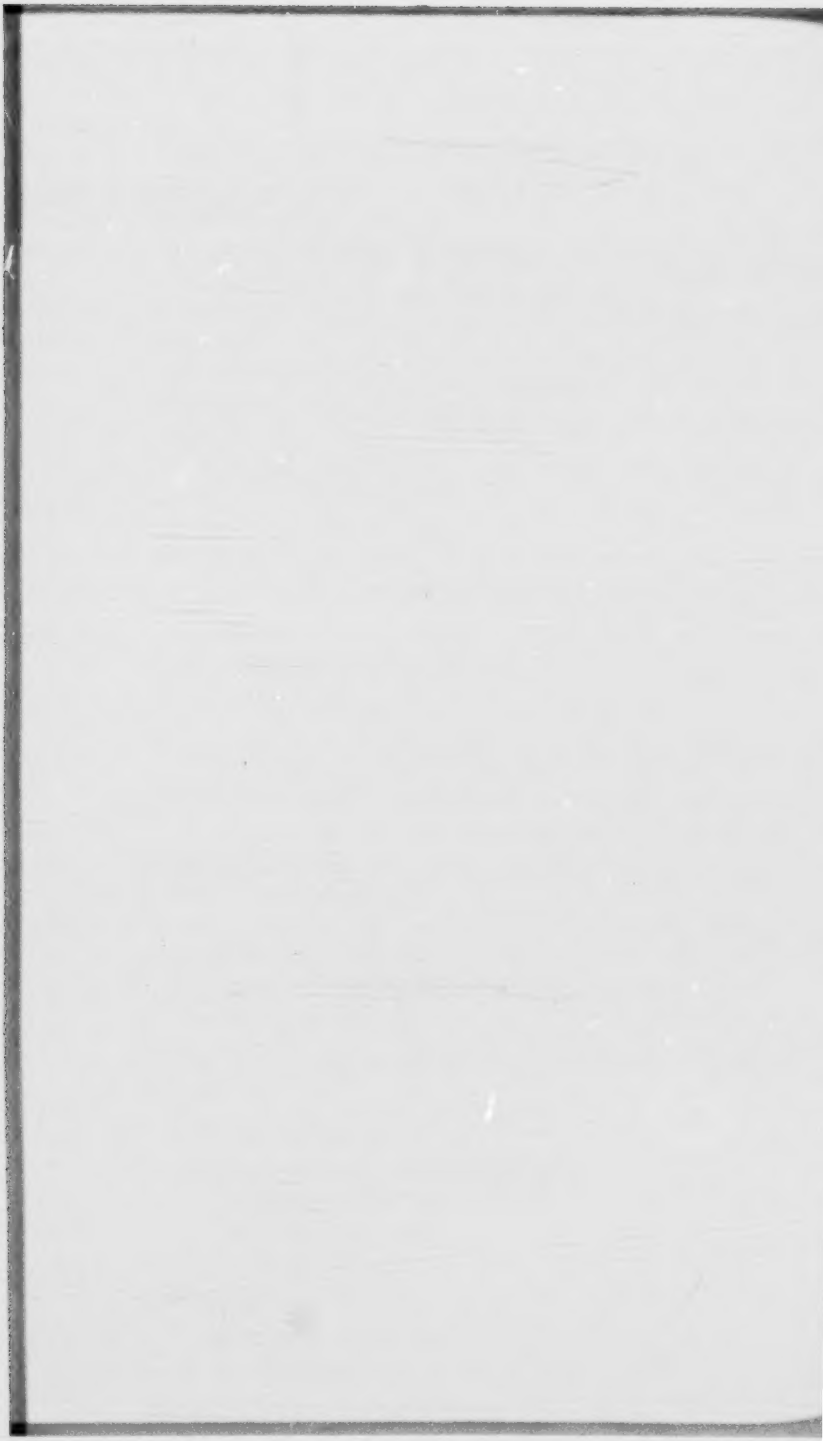
New Haven, Connecticut
Attorneys for Children of Appellants



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-6033

SHARON ROE and DOROTHY POE, on behalf of themselves and others similarly situated,

Appellants,

v.

NICHOLAS NORTON, individually, as Commissioner of Welfare of the State of Connecticut, and on behalf of others similarly situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF CHILDREN OF APPELLANTS

QUESTIONS PRESENTED

1) Conn. Gen. Stats. §52-440b requires each mother of an illegitimate child on welfare to make public disclosure of the name of the child's putative father and to prosecute the father in a paternity action, presuming irrebuttably that disclosure and prosecution serve the child's interest. Does the failure of the statute to

provide a hearing on this issue deprive the child of his right to family privacy and autonomy without due process of law?

2) Does Section 52-440b deprive those illegitimate children who are poor of the equal protection of the laws by providing that only a poor child is subject to compelled disclosure and prosecution of his father without regard to the impact of compulsion on the child?

STATUTES INVOLVED

Conn. Gen. Stats. §52-440b provides:

Compelling disclosure of name of putative father and institution of action. (a) If the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appear or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

For the text of other relevant statutory provisions, see Appendix to this Brief (hereinafter Br. App.).

STATEMENT

This action was brought by two mothers of illegitimate children on welfare to challenge the constitutionality of a Connecticut statute that authorizes certain officials to bring contempt citations against mothers of illegitimate children, requiring the mothers 1) to disclose to a judge of the circuit court the name of the putative father of their child, and 2) to institute and prosecute a paternity action.

Paternity actions in Connecticut are a means by which a support obligation may be imposed on an unwed father. Conn. Gen. Stats. §52-435a. They are civil actions and either party may demand a jury trial on the issue of paternity. Conn. Gen. Stats. §§52-438, 52-442. In the event the defendant is found guilty of being the father, he is charged with the support and maintenance of the child during the child's minority, although he is not accorded any corresponding parental rights by statute. Conn. Gen. Stats. §§52-442, 45-43. The convicted putative father may be incarcerated for failure to comply with court support orders and "shall be kept at hard labor," and he is not relieved of his debt upon release from jail. Conn. Gen. Stats. §52-443.

A mother who refuses to make disclosure or prosecute a paternity action may under the statute be found in contempt of court and fined not more than two hundred dollars or incarcerated not more than one year or both.

The statute establishes different enforcement mechanisms for different classes of children. The Welfare Commissioner may bring citations to compel disclosure with respect to children receiving public assistance, Connecticut's program of Aid to Families With Dependent Children (AFDC); a town selectman with respect to children receiving general assistance; and the guardian or guardian ad litem of a child with respect to children who are not on welfare. The Welfare Commissioner has declared it his policy to bring citations against every mother whose child receives AFDC and who refuses to make disclosure to him. Stipulations of Counsel, Single Appendix (hereinafter App. 56); Deposition of Caroline Packard (App. 81). By contrast, a guardian or guardian ad litem other than the mother may be appointed for the child only when a court determines that the interests of the child require such an appointment, Conn. Gen. Stats. §§45-43, 45-54, and is bound by fiduciary obligations to the *child.*

Each of the two mothers who brought this action had been cited to appear in court pursuant to the statute. They brought the action against the Welfare Commissioner on their own behalf and on behalf of their minor children, alleging that the statute violated privacy and due process rights and deprived them of equal protection of the laws. (App. 5-9.) The action was brought pursuant to 42 U.S.C. §1983 and sought both declaratory and injunctive relief. *Ibid.* It also sought the convening of a three-judge court pursuant to 28 U.S.C. §2281.

At the same time, another similar action was pending in the District of Connecticut, and the two actions were

ordered consolidated. (App. 13.) Upon consolidation, and after denying an application for a preliminary injunction, *Doe v. Norton*, 356 F. Supp. 202 (D. Conn. 1973), the court below on its own motion appointed counsel to represent the children of plaintiffs in both cases, in order to assure representation of what it saw as divergent interests of mothers and their children. (App. 29); *Doe v. Norton*, 365 F. Supp. 65, 69 (D. Conn. 1973). The children participated in the District Court, and the court deemed them "not only proper, but necessary parties". *Ibid.* Likewise, the court designated the action a class action, but divided plaintiffs into two subclasses:

"1) those mothers receiving AFDC assistance who refuse to comply with Section 52-440b; and

2) the illegitimate children of those mothers." *Ibid.* Although the plaintiffs had originally brought their action against the Welfare Commissioner as a representative of the class of all persons empowered to enforce the statute, the District Court did not certify a class of defendants.

The plaintiffs produced evidence in the form of affidavits from women who were cited into court or threatened with citation. Many of these women used affidavits in order to be able to testify pseudonymously and preserve their privacy. They detailed the harm they feared from disclosure, for themselves and their children. Their evidence about their individual situations was reinforced by evidence the children produced from Albert Jay Solnit, M.D., a child psychiatrist and psychoanalyst who is director of the Yale Child Study Center and President of the American Academy of Child Psychiatry (App. 63), and Edward F. Zigler, Ph.D., a psychologist specializing in child psychology who is Professor of Psychology at Yale, as well as former director of the Office of Child Development in the Department of Health, Education and Welfare.

(App. 125). Both experts testified to the disruption of families and the danger to the children's well-being that their training and clinical experience led them to predict enforcement of the statute would bring. The children produced in addition depositions from welfare department officials detailing the functioning of the statute.

The defendant produced statistics showing the incidence of illegitimacy in Connecticut.

The three-judge court on September 7, 1973, denied the application for a permanent injunction and dismissed the complaint. The court held that the statute did not invade a protected right of privacy by authorizing compelled disclosure in court, and ruled that it did not intrude "into the home nor any participation in interpersonal decisions among its occupants . . ." *Doe v. Norton,* 365 F. Supp. at 77, and therefore did not impinge on any rights of privacy, 365 F. Supp. at 77-78. The court also rejected plaintiffs' equal protection claim based on unequal enforcement of the statute, finding any discrimination "rational" to advance the interest of the State in recouping expenditures made on behalf of children on welfare. 365 F. Supp. at 82. Finally, it found no conflict between the statute and the Social Security Act, 42 U.S.C. §401 *et. seq.* 365 F. Supp. at 70-73.

Judge Newman concurred in the result. He thought it "evident" that the statute involved constitutionally protected privacy rights of the mother but found the statute constitutional "on its face," "in the precise sense that not every application of the statute would achieve an unconstitutional result." 365 F. Supp. at 84. However, Judge Blumenfeld writing for the court had recognized that plaintiffs had objected to the statute "as applied to them." 365 F. Supp. at 69.

This appeal by the plaintiff mothers followed. The children, although not appealing from the judgment in *Roe v. Norton*, argued below that the statute was unconstitutional as applied to them and support the position of the appellants here, on the premise that the interests of the children demand that the judgment be reversed.

SUMMARY OF ARGUMENT

1. Section 52-440b authorizes the State to compel the mother of an illegitimate child to identify and prosecute the father of that child. It thereby invades the family privacy and autonomy of the child, as well as that of the mother. The invasion threatens the most vital aspect of the child's right to family privacy: the continuity of the family and its relationships. The child's relationship with his father may be terminated as a result of the litigation; his relationship with his mother may be impaired; the disclosure may leave him a "father" he has not seen and does not know and weaken developing bonds with an adoptive father or stepfather.

The State's interest in its purse is plainly not the type of interest which justifies infringing this important right of the child, particularly where the prospects for collecting significant sums from the unwed father are slim, and the risk of harm to the child is great.

Nor can the State's interest in the well-being of children justify the functioning of the statute. For while purporting to safeguard the financial and psychological interests of the child, the State requires disclosure even when it would in fact harm the child. The statute thereby establishes an irrebuttable presump-

tion, contrary to fact, that disclosure and prosecution of a paternity action is always in the interest of the child. By denying the child a hearing at which he may prove that disclosure or prosecution would in fact be harmful, the statute denies the child due process of law.

2. Section 52-440b establishes one enforcement mechanism for children who receive welfare and a different, less onerous, mechanism for other children. In the case of a child who receives welfare, the power to enforce the statute is given to the Welfare Commissioner, who in fact proceeds against all mothers who refuse to make disclosure, without considering whether the proceeding will serve the interests of the child in a particular case. In the case of other children, however, the power to enforce the statute is given only to a guardian or guardian ad litem for the child. A guardian is appointed only when a court is persuaded the appointment will serve the child's interests, and the guardian has a fiduciary obligation to act in the child's interest in deciding whether to compel disclosure and prosecution of the father. Thus the interests of a non-welfare child are considered at two stages while those of the welfare child are not considered at all.

This distinction amounts to a legislative classification based on wealth, affecting the child's interests and family privacy. The State offers no plausible justification for affording a hearing to some children and denying it to those who receive welfare. Consequently, this statute deprives those illegitimate children who receive welfare the equal protection of the laws.

ARGUMENT

I.

SECTION 52-440b INVADES THE RIGHT OF CHILDREN TO PRIVACY AND AUTONOMY IN FAMILY LIFE WITHOUT PROVIDING ANY DETERMINATION THAT THE INVASION IS JUSTIFIED, IN VIOLATION OF THE CHILDREN'S RIGHT TO DUE PROCESS OF LAW.

A. Section 52-440b invades the right of children to privacy and autonomy in family life, which is a fundamental part of the liberty protected by the Fourteenth Amendment.

The statute at issue in this case authorizes the State to compel the mother of an illegitimate child to do two things: 1) to disclose the identity of the child's father in circuit court, and 2) to institute and prosecute a paternity action against the father.[1]

The statute threatens important rights of the mother with respect to childrearing and sexual privacy.[2] But

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[1] The authority to compel disclosure is given to the Commissioner of Welfare in the case of a child receiving public assistance, which is Connecticut's program for administering the federal program of Aid to Families With Dependent Children (AFDC); to the town selectman in the case of a child receiving general assistance; and to the child's guardian or guardian ad litem in all other cases. This distinction has serious consequences discussed in Part II of this brief.

[2] Plainly, as Judge Newman explained below, the constitutionally protected privacy of family life includes the interest of a mother in resisting compelled disclosure and prosecution of the putative father of her illegitimate child:

> "It is certainly an important aspect of child rearing for a mother to decide whether to secure legally some actual or potential financial benefit for her child at the expense of

the child suffers an even more serious invasion of his right to family privacy when the State compels his mother to disclose his paternity and to prosecute his father. The State forcibly alters the child's relationship with his mother and his father, without regard to the risk that altering these family relationships will cause more harm to the child than good. In addition, the State exposes to public scrutiny intimate details of the child's family history, without regard to the resulting legacy of humiliation and shame that the child may be left to endure. Finally, the State subjects the child to knowledge of facts about his parents, without regard to the possibly damaging impact of that knowledge on his psychological well-being. This threefold assault on the child's fundamental right of privacy is not justified by any substantial state interest, and therefore deprives the child of liberty without due process of law.

It is now established that the right of privacy to which the Constitution extends "special safeguards," *United States v. Orito*, 413 U.S. 139, 142 (1973),

> "encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing. Cf. *Eisenstadt v. Baird*, 405 U.S. 438, 453-54 (1972); *id.*, at 460, 463-465 (White, J., concurring); *Stanley v. Georgia*, [394 U.S. 557], at 568 [1969]; *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Griswold v. Connecticut*, [381 U.S. 479], at 486 (1965);

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fracturing an amicable father-child relationship or even of harming the child by inflicting upon it distressing knowledge such as incestuous parentage. Decisions on such matters would plainly seem to enjoy no less constitutional protection than the decision whether to educate the child at a public or private school. *Cf. Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L. Ed. 1070 (1925)." *Doe v. Norton*, 365 F.Supp. 65, 85 (concurring opinion).

Prince v. Massachusetts, 321 U.S. 158, 166 (1944); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65-66 (1973).

The concept of family privacy embodies the fundamental notion that childrearing is, absent extraordinary circumstances, the business of parents and not of the State. As the Court recently said in *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972):

> "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

Children, as well as their parents, have a strong stake in the preservation of the autonomy of their family lives from state interference. The child's interest in having his parents rather than the State make the crucial decisions concerning his family life is entitled to fully as much constitutional protection as other aspects of the right of privacy.

It is established that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," *In re Gault*, 387 U.S. 1, 13 (1967), see *Tinker v. Des Moines School District*, 393 U.S. 503, 506-507 (1969), and that the protection of family life from state control is in large measure the right of the child as well as of his parent. *Levy v. Louisiana*, 391 U.S. 68, 71 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 165-166 (1944); see *Keyes v. School District No. 1*, 413 U.S. 189, 247-248 (1973). (Powell, J., concurring in part and dissenting in part).

The Court has recently recognized both the importance of family relationships and the special

character of the child's interest in these relationships. In *Stanley v. Illinois*, 405 U.S. 645 (1972), the Court struck down a statute that abridged, without a hearing, the fundamental interest of a father in the care and custody of the illegitimate children he had "sired and raised," 405 U.S. at 651. In *Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1972), the Court remanded a case factually similar to *Stanley*

> "for further consideration in light of *Stanley v. Illinois, ante*, p. 645, and with due consideration for the completion of adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Ibid.*

The Court recognized in *Rothstein* that the fundamental right of a father to care and custody of his natural child might be outweighed by his child's interest in membership in a different family. Family privacy and integrity, in short, is at least as much the right of a child as of his parent.

The reasons for extending special constitutional protections to family life apply as fully to children as to their parents. The special protection accorded family privacy stems in large measure from a recognition of the importance of the family to its members. The bonds between family members, especially between children and the parents who nurture them, have a strength to which the State must defer; courts and legislatures must recognize that, for example, the rights to care, custody and the companionship of one's children are "far more precious [to parents] than property rights." *May v. Anderson*, 345 U.S. 528, 533 (1953). Moreover, in a society of families, the composition and conduct of one's own family affects every aspect of daily life and fundamentally shapes each person's life cycle. *See, e.g., Roe v. Wade*, 410 U.S. 113, 153 (1973); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). As family life and family

relationships are vital to parents, so are they at least as vital to children, for whom the family is their entire universe.

As a theoretical matter, the autonomy of the family is a vital part of the freedom of association protected by the First Amendment, *Griswold v. Connecticut*, 381 U.S. 479 (1965), and the child has a vital stake in the continuity and autonomy of his family as a member of a "communit[y] . . . characterized by shared understandings and values." Tribe, "Forward: The Supreme Court, 1972 Term," 87 *Harv. L. Rev.* 1, 34 (1973). One principal reason for affording special protection to the family is that it serves as the primary agency for fostering important interests of the child. The Court has protected family autonomy against invasions which jeopardize the development of the child in matters of religion, *Wisconsin v. Yoder*, 406 U.S. 205 (1972), thought and expression, *Meyer v. Nebraska*, 262 U.S. 390 (1923), and individuality and autonomy as a person, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Ordinarily, judicial protection of family autonomy is invoked in the service of these other interests. But in this case, the threat is to the continuity of the child's family itself, which is the foundation and prerequisite for all the other values protected by family autonomy. If the Constitution recognizes the fundamental role of the family in our society and in the advancement of important rights of the child, it must accord the child protection against State-sponsored dismemberment or disruption of his family.

The evidence in the record illustrates the kinds of disruption to which children's families are exposed when their mothers are subjected to state compulsion under Section 52-440b.

1. "A"[3] testified that she planned to marry the father of her illegitimate child. She testified further that

[3](App. 39). Appellants and other women who gave testimony in affidavit form used pseudonyms, which are indicated here by quotation marks.

her child's relationship with its father might be threatened if she were compelled to sue the father in a paternity action.[4] If "A" married the child's father, the child would be fully legitimated, a result a successful paternity action could not achieve. Conn. Gen. Stats. §45-274.

2. "Mary Brown," (App. 40) testified that she planned to marry a man who is not the father of her illegitimate child but who is acting as a father to the child and would be in a position to adopt the child after the marriage. For her to name the biological father and prosecute a paternity action would jeopardize the child's interest in being adopted and in avoiding the stigma of illegitimacy for the rest of its life. "Mary Brown" resists disclosure, therefore, in order to spare her child "the social opprobrium suffered by these hapless children. . . ." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 176 (1972).

Both "A" and "Mary Brown" have protected whatever interest their children might have in establishing their paternity by obtaining written acknowledgments of paternity from the children's fathers.[5]

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[4] The Department of Health, Education and Welfare has observed that "A's" plight is not unusual:

> ". . . Legal action taken by the parent to meet the agency's conditions may result in additional strains in relationships within the home, or may unwisely force the permanent severance of relationships with the absent parent." Handbook of Public Assistance Administration, Part IV, at 3422.5(2).

See also, Bridges v. Secretary, CCH Unemployment Ins. Rep. ¶16,480, at 2499-463 (E.D.N.Y. 1971).

[5] Such an acknowledgment accompanied by the mother's acknowledgment has, when filed with the Circuit Court, the force of a final judgment of paternity. Conn. Gen. Stats. §52-442a. Since no action need be brought when paternity is established by acknowledgment, the three-year statute of limitations does not apply.

Many other children are harmed in equally profound ways by this type of state intrusion into family privacy. Two experts in the fields of child psychology and child psychiatry gave uncontradicted testimony concerning the likely consequences to children of Section 52-440b's invasion of the autonomy of the family.[6] Dr. Edward Zigler confirmed Judge Newman's apprehension of the danger of "distressing knowledge", 365 F. Supp. at 85, of paternity:

> "The child's self-image will also be severely damaged when he knows who his father is where this knowledge brings home the fact of the father's failure to live in the home. A young child will assume that his father is absent because the child is unworthy in some way or because his father hates him." (App. 127).

Dr. Zigler went on to analyze the harm caused a child by compulsion of his mother in this intimate area of family life:

> "Particularly in strained situations such as father absent homes, it is important to a child for his mother to feel free and confident in her relationship with the child. State compulsion and intrusion into one aspect of that relationship—the information the mother imparts about the father—may be expected to leave a mother less sure of

[6] Albert Jay Solnit, M.D., is a child psychiatrist and psychoanalyst who is director of the Yale Child Study Center and President of the American Academy of Child Psychiatry, as well as past-President of the American Psychoanalytic Association. (App. 63). Edward F. Zigler, Ph.D., is a child psychologist who is Professor of Psychology and Chairman-designate of the Department of Psychology at Yale, as well as former director of the Office of Child Development in the Department of Health, Education and Welfare. (App. 125).

herself as a mother. She will feel less in control of her relationship with her child; and as a result the child will feel less secure and sure of himself and who he is. Because the State is making an important decision about family life the mother, and hence the child, will also to some extent shift responsibility for parenting from the mother to the State, an effect which increases a sense of dependency on the State in both mother and child." (App. 128).

The court below rejected the claim that the statute interferes with the right of privacy, on the ground that the right of privacy protects certain activities relating to marriage and procreation but it does not protect information about those activities. 365 F. Supp. at 73-77. On this view, information about private conduct is protected only by the Fifth Amendment privilege against self-incrimination, and by non-constitutional common law evidentiary privileges.

As Judge Newman's concurring opinion makes clear, however, the constitutional protection of private conduct may also require protection of information about that conduct. 365 F. Supp. at 84-85, citing *NAACP v. Alabama*, 357 U.S. 449 (1958); *Bates v. Little Rock*, 361 U.S. 516 (1960). See also *Merriken v. Cressman*, 365 F. Supp. 913 (E.D. Pa. 1973). Moreover, even if mere information were outside the protection of the right of privacy, that would not dispose of this case. For §52-440b authorizes the State to compel the mother of an illegitimate child not only to disclose the identity of the father, but also to institute a paternity action against him. The mother is compelled to be not only a witness but also a plaintiff. Indeed, the compulsion of this hostile act by the mother against the father is one of the most important aspects of the intrusion of this statute on the privacy, and stability, of the child's family life.

It is now established that "where certain 'fundamental rights' are involved . . . regulation limiting these rights may be justified only by a 'compelling state interest,' . . . and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake," *Roe v. Wade*, 410 U.S. 113, 155 (1973); and that the right to privacy is one of these 'fundamental rights.' *Ibid.* See also *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring). It is necessary, therefore, to analyze the state interests advanced in support of the statute and the means by which the statute purports to advance those interests.

B. The State purports to justify its invasion of children's rights to privacy and autonomy in family life by means of insubstantial interests and an irrebuttable presumption, depriving the children of liberty without due process of law.

The State advanced two distinct interests in support of the statute: that of the State, and that of the children. According to the District Court,

> In the absence of any legislative history, the court inquired and was informed that the scope of this statute was intended not only to protect the state's coffers but also to establish the paternity of all illegitimate children so that they might enjoy the long term psychological and economic advantages to be gained thereby.

365 F. Supp. at 73n. 10. (Citation omitted).

State court application of Section 52-440b has focused almost exclusively on the statute's function as a recoupment device, and has recognized that "[t]he primary purpose of the statute is to protect the State's coffers." *Norton v. Larracuento* (Br. App. 47a). Likewise,

in *Welfare Commissioner v. A. Ar.* (Br. App. 27a. Initials are used to protect privacy.), the court observed,

> "The State is entitled to be reimbursed for the money they expended for the support of the child. . . . That is all the State is interested in, the reimbursement. . . . If nothing can be worked out [to repay the State], you're going to have to go to jail."

The history of Connecticut's efforts to extract the names of putative fathers from the mothers of illegitimate children on welfare shows the primacy of the fiscal purpose. That history is detailed by the District Court. 365 F. Supp. at 71-72. Connecticut made disclosure a requirement of eligibility for welfare, first for entire families and then only for their mothers. *Doe v. Shapiro,* 302 F. Supp. 761 (D. Conn. 1969), appeal dismissed, 396 U.S. 488, rehearing denied, 397 U.S. 970 (1970); *Doe v. Harder,* 310 F. Supp. 302 (D. Conn.), appeal dismissed, 399 U.S. 902 (1970). This enforcement device snugly fits a fiscal recoupment rationale but is plainly incompatible with a state claim to protect the interests of the children it proposes to deprive of subsistence. See *Doe v. Shapiro,* 302 F. Supp. at 766. We will turn, then, to this primary purpose, "the protection of the State's coffers."

1. The State's financial interests are too insubstantial to justify invasion of important constitutional rights of children.

The State's fiscal claim is simply put: fathers, including adjudicated fathers of illegitimate children, are obligated to support their children. The State supports illegitimate children who receive AFDC, and therefore it is entitled to reimbursement from the father for its expenditures on behalf of the dependent illegitimate child. This statute facilitates that reimbursement. But this

claim must be weighed against the claim of mothers and children to family privacy, and to freedom from disruption of family life.

The Court has in a long series of equal protection decisions rejected rationalizations that a particular state policy saved the State money as an adequate ground on which to uphold a statute which worked a hardship on a particular class of people or penalized exercise of a constitutional right. Thus in *Graham v. Richardson*, 403 U.S. 365 (1971), and *Shapiro v. Thompson*, 394 U.S. 618 (1969), very substantial economies were held inadequate to justify the discrimination against aliens and new residents, respectively. See also *Rivera v. Dunn*, 329 F. Supp. 554 (D. Conn. 1971), affirmed 404 U.S. 1054 (1972). In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), fiscal gains were held inadequate to withhold from the poor access to a right deemed "fundamental." So here the State seeks to protect its coffers by invading the rights of mothers and children to family privacy. As the State's fiscal claim does not justify invasion of the right to travel or to vote in state elections on an equal basis with those who can pay a poor tax, so it cannot justify deprivation of the fundamental right of privacy.

This point is particularly clear with respect to children, as distinct from mothers who resist disclosure. The children are not in a position to advance the State's fiscal interest by giving information, and they depend on the State for their subsistence through no choice of their own. As to them, the State has recognized and asserted below its paramount interest in protecting their well-being. See, *e.g.*, *Wyman v. James*, 400 U.S. 309 (1971). The State cannot simultaneously

claim a right to undermine that welfare in the interest of the State's coffers.

Moreover, the practical effect of Section 52-440b on the State's interest is so slight as to defy recognition as a justification for the statute. Disclosure of the father's identity is not likely to produce support payments in most cases. Very few fathers of welfare children have sufficient resources to provide support payments. And even those who can pay are likely to evade enforcement of new support obligations. In AFDC cases involving married fathers, only one-fifth of the fathers contributed support during 1971. U.S. Department of Health, Education and Welfare, Findings of the 1971 AFDC Study, Part III, DHEW Publication No. (SRS) 73-03759 (hereinafter AFDC Study), table 6. It is unlikely that in the case of unmarried fathers the State could match even this unimpressive collection record.

It appears, moreover, that in most cases the mother of an illegitimate child gives the welfare department the name of the child's putative father. Deposition of Joseph Mancini (App. 112). Those who refuse, as the affidavits submitted in the District Court show, frequently do so in part because of the unsavory, unstable or unreliable nature of the putative father (App. 37, 45-46, 51). These fathers may be expected to be the least likely subjects of successful support proceedings.

Realistically, then, the State has a weak claim of injury to its fiscal integrity. It would reap greater financial rewards by using its limited resources to collect support from absent husbands, rather than from absent illegitimate fathers. In fact, however, the State does not pursue absent husbands with the vigor reserved for unknown putative fathers. Mothers of legitimate children cannot be compelled by statute to institute a support action, while Section 52-440b compels prosecution of a paternity adjudication. Conn. Gen. Stats.

§52-442. The State therefore claims fiscal necessity with respect to a requirement it does not apply to mothers of legitimate children. This discrimination diminishes the plausibility of the State's fiscal claim, and suggests that the statute may be a penalty for giving birth to an illegitimate child as much as a financial measure. To the extent it is punitive, the punishment falls on the child at least as much as on his parents, and this Court has firmly and unmistakably forbidden vicarious punishment of illegitimates for the supposed sins of their parents. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175-176 (1972); see *New Jersey W.R.O. v. Cahill*, 411 U.S. 619 (1973).

Even were the State's fiscal claim sufficient in principle to justify intrusion into the rights of mothers and children, Section 52-440b fails the "least drastic means" test with respect to the State's fiscal claim. Compulsion is permitted by the statute and sought by the Commissioner in a variety of situations in which benefit to the State is unlikely or even impermissible while harm to the children and their mothers is quite likely. For example, as Judge Newman pointed out below, the statute permits compelled disclosure of the father's identity, even if the statute of limitations for a support action has run. 365 F. Supp. at 86. The statute permits compelled disclosure even if the mother can show that the putative father is in a category of men who virtually never provide support, such as prison or mental hospital inmates. See AFDC Study, table 16. In short, the statute permits invasion of fundamental privacy rights of children and their mothers in instances where the invasion will not even advance the state fiscal interest asserted to justify it. Viewed as a fiscal measure, therefore, the statute "needlessly, arbitrarily, [and] capriciously impinge[s] upon this vital area of . . . constitutional liberty . . ." *Cleveland Board of Education v. LaFleur*, ___ U.S. at ___, 94 S. Ct. at 796, and is unconstitutional.

If Section 52-440b is to be sustained, then, it must be on the basis of the secondary statutory purpose asserted below: the *parens patriae* interest of the State in the children subject to the statute.

2. The State's interest in the well-being of children cannot justify its invasion of children's rights.

The District Court accepted the State's contention that "[i]nstead of operating to the disadvantage of children born out of wedlock, the statute operates to their benefit." 365 F. Supp. at 79. Mothers who resist naming and prosecuting the putative fathers of their children, in this view, harm those children, while state compulsion secures "long term benefit . . . to the children by the early establishment of their paternity. . . ." 365 F. Supp. at 80. In fact, however, analysis of the potential benefits and harms to children from compulsory disclosure and prosecution shows that the interests of children vary with their individual circumstances. Most children are more likely to be harmed than helped by enforcement of the statute against their mothers.

a. The interests of the child are not served by the statute in many cases.

Financial Interests

Compulsory disclosure and prosecution of the father may conceivably produce financial benefits for the child in the form of present support payments or future benefits from insurance or other sources. In many cases, however, the likelihood that the child will in fact realize any net financial benefit from the proceeding is negligible.

The child will realize no present benefit from a successful paternity adjudication if his father cannot be compelled to make support payments, a situation which exists if the father is impecunious, eludes efforts to collect support,[7] or is not amenable to process[8] or successful prosecution. Indeed, even if support payments are forthcoming, the child will realize no financial benefits unless the father can be compelled to make support payments on his behalf which exceed the amount he and his mother receive in welfare benefits. This follows from the fact that the family welfare allotment will be reduced in precisely the amount of any support payments. See *Norton v. Larracuento*, Br. App. at 40a.

With respect to the various benefits that may be payable at some future time, such as Veterans' benefits, the child can ordinarily establish his rights by proving paternity at the time when payments fall due even if there has been no prior adjudication of paternity.[9] See

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[7]The AFDC Study discloses that even among fathers whose whereabouts were known, lived in the same state as the mothers receiving AFDC, and were not institutionalized, two-thirds paid no monthly support whatever. AFDC Study, table 16.

[8]The whereabouts of 61.4% of all unmarried fathers of AFDC children are unknown and another 9.3% do not live in the same state as the mother. AFDC Study, table 4. While the number of fathers whose whereabouts were unknown would be somewhat reduced by the operation of Section 52-440b, it would remain very substantial; the number of married fathers whose whereabouts were unknown exceeded 50% for the sample period. *Ibid.*

[9]The Veterans' Administration Act, 38 U.S.C. §101(4)(C), provides that illegitimate children may recover benefits if they can show paternity by 1) a written acknowledgment of paternity, or 2) an adjudication of paternity, or 3) can "otherwise establish [paternity] to the satisfaction of the administrator." If no paternity action has been brought, the child still has an opportunity to prove paternity before the

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972). In this way his financial interests are protected and the harmful and disruptive effects of a Section 52-440b proceeding may be avoided or at least deferred.[10]

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administrator. A child whose mother has an acknowledgment does not need a §52-440b proceeding to get Veterans' benefits.

Some benefit programs require a showing of "dependency" in order to recover benefits. See, *e.g.*, 33 U.S.C. §902(14) (Longshoremen's and Harbor Workers' Compensation Act); 46 U.S.C. §761 (Federal Death on the High Seas Act). Connecticut's Workmen's Compensation Act has such a provision, Conn. Gen. Stats. §§31-275, 31-306. Use of Section 52-440b does not determine eligibility for these programs. There can be dependency without an adjudication of paternity, *Piccinim v. Connecticut Light and Power Company*, 93 Conn. 423 (1919), and dependency is not established by the existence of an obligation to support; there must be actual support, *Ingalls Shipbuilding Corp. v. Neuman*, 322 F.Supp. 1229, 1241-45 (D.Miss. 1970); Conn. Gen. Stats. §31-275.

Where a statutory benefit is awarded in accordance with state intestacy laws, *e.g.*, *De Sylva v. Ballentine*, 351 U.S. 570 (1956) (Copyright Act, 17 U.S.C. §24); Conn. Gen. Stats. §45-280 (Wrongful Death), the Connecticut child would not be assisted by a paternity decree, as he would still be excluded from intestate succession to the father's estate. *Heath v. White*, 5 Conn. 228, 235 (1824); *Arcand v. Fleming*, 185 F.Supp. 22, 24 (D.Conn. 1960); see *Labine v. Vincent*, 401 U.S. 532 (1971). If these exclusions give way in light of *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972), then Section 52-440b controls when the paternity determination is made, but will not provide an otherwise unavailable opportunity for it to be made; *Weber* struck down an exclusion of unacknowledged (and unadjudicated) dependent, illegitimate children from statutory benefits.

[10]With respect to one categorical benefit program—the Social Security Act, 42 U.S.C. §§401 *et seq.*—there is sometimes an advantage to bringing a paternity action. Some illegitimate children who cannot show a paternity adjudication in order to receive benefits will have to prove not only paternity but also that their father was "living with" them or "contributing to [their] support," 42 U.S.C. §416(h)(3), at the time made relevant by the statutory subsection applicable to the benefit in

Not only do Section 52-440b proceedings often fail to produce any real benefit to the child, but they may actually threaten financial interests in a variety of situations. First, litigation may interfere with a developing amicable relationship between the father and his family, a relationship which would serve the child's financial interest better than a support order.[11]

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question. But the prejudice is only to a very slender category of children.

In order to be prejudiced under the statutory scheme, a child must 1) have a putative father who is insured under the Act and entitled to one of the categorical benefits; 2) have the disclosure required by Section 52-440b be followed by a paternity action, see footnote 8, *supra;* 3) have the paternity action be successful; 4) not have a timely written acknowledgment of paternity. The writing need not be formal, see *Madison v. Richardson,* 354 F.Supp. 383 (M.D. La. 1973); *cf. State v. Wolfe,* 156 Conn. 199 (1968); 5) not have been otherwise decreed by a court to be the child of the putative father, *cf. Hartford National Bank & Trust Co. v. Prince,* 28 Conn. Sup. 348 (Super. Court 1968); and 6) not be able to show the Secretary satisfactory proof of paternity together with evidence the child was living with or receiving support from his father at the relevant time.

The statutory definition of "living with or contributing to the support of" the child has been judicially interpreted extremely favorably to applicants, see *Madison v. Richardson, supra; Bridges v. Secretary,* CCH Unemployment Ins. Rep. ¶16,480 (E.D.N.Y. 1971); *Mobley v. Richardson,* CCH Unemployment Ins. Rep. ¶16,439 (W.D.N.C. 1971); *Wagner v. Finch,* 413 F.2d 267 (5th Cir. 1969); *Schmiedigen v. Celebrezze,* 245 F.Supp. 825 (D.D.C. 1965).

Indeed the Act's discrimination against unadjudicated illegitimate children may violate the Equal Protection Clause, see *Jimenez v. Weinberger,* ___ U.S. ___, 42 L.W. 4948 (June 19, 1974).

[11] A study of support payments from absent fathers shows that the greater the informality of a support agreement, the more likely it is that a father will make support payments and the larger those payments will be. S. Kaplan, *Support from Absent Fathers in Aid to Dependent Children, Social Security Bulletin,*

Second, a paternity suit pursuant Section 52-440b might be unsuccessful and in that case the rules of *res judicata* and collateral estoppel would preclude establishment of paternity at a more propitious time.[12] Third, there may be a potential adoptive father who would support the child, and disclosure or litigation might interfere with that alternative source of financial benefit to the child, see, *e.g.*, Affidavit of "Mary Brown." (App. 40.)

Finally, from the point of view of the child, the statute is self-defeating in any case where the mother is determined to resist disclosure. The mother may choose to be fined or imprisoned for contempt, or avoid the operation of the statute by removing her child from the welfare rolls, or she may testify falsely at the hearing. The latter two responses may well be quite common.[13] In such cases, the statute confers no financial benefit at

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Vol. 21, No. 2, Pages 3, 6, 9 (1958). The study concludes that the contribution rate of fathers contributing under court order is less than that of fathers voluntarily contributing because "[c]ourt proceedings may sometimes engender greater hostility between the parents of the children and impair any prospects that might have existed for a family reconciliation; in addition court costs must be paid." *Ibid.*, at 6. See also *Bridges v. Secretary*, CCH Unemp. Ins. Rep. ¶16480, at 2499-463 (E.D.N.Y. 1971).

[12] *Ruocco v. Logiocco*, 104 Conn. 585 (1926). The same adjudication could be used to bar recovery under federal statutes, see *Collins v. Celebrezze*, 250 F. Supp. 37 (S.D.N.Y. 1966); see also *In re Burrus*, 136 U.S. 586 (1890); *Harris v. Turner*, 329 F.2d 918 (6th Cir. 1964), cert. denied, 379 U.S. 907 (1964).

[13] For examples of removal of the child from the welfare rolls, see *Doe v. Norton*, 365 F. Supp. 65, 78 n.21 (D. Conn. 1973); *Welfare Commissioner v. A.A.*, Br. App. 7a; *Welfare Commissioner v. S.B.*, Br. App. 9a; *Welfare Commissioner v. R.C.*, Br. App. 11a. For examples of cases in which the court suspected untruthful testimony, see *Welfare Commissioner v. R.C.*, Br. App. 11a, at 14a-16a; *Welfare Commissioner v. M.B.*, Br. App. 18a.

all on the child, it may in fact harm him financially, and it may cause grave harm to other interests of the child as well.

In many cases, then, the child will realize no benefit from compulsory disclosure and prosecution of the father, and indeed in some cases the child may realize a financial loss.

The State asserts, however, that Section 52-440b offers children not only financial benefits, but important psychological benefits as well.

Psychological Interests

The State has asserted that compelled disclosure and prosecution of a paternity action benefits children psychologically by enabling them to know who their fathers are and by facilitating development of a father-child relationship. The State offered no evidence in support of this claim, and the record demonstrates that in many cases enforcement of the statute endangers paramount psychological interests of children and leaves them psychologically damaged casualties of the State's campaign against family privacy.

Embroiling the child's parents as adversaries in litigation of which he is the subject strains and may break developing bonds between the child and his father, either by disrupting the relationship between father and mother or by fostering paternal resentment of the child. Deposition of Albert Jay Solnit (App. 65-66, 68-70); Affidavit of Edward F. Zigler (App. 128); Affidavits of "A", "M," and "Sharon Roe" (App. 39, 42-43, 50-51); see *Doe v. Norton*, 365 F. Supp at 85 (concurring opinion).

Likewise the child's relationship with his mother is threatened when, on account of him, she is obligated to identify publicly the man with whom she has been sexually intimate, and to sue the father of her child.

The mother, already burdened with the difficult task of raising her illegitimate child without a husband and on the margin of financial subsistence, is placed under additional stress, which impairs her capacity to care for her child. Moreover, she may resent the child as the source of an onerous legal obligation or as the catalyst for the disruption litigation may have caused to her relationship with the child's putative father, see Affidavit of Edward Zigler (App. 128); Affidavits of "Rena Roe" (App. 37), and Mildred Walter (App. 41-42).

Finally, the child may be harmed by knowledge of his father's identity. Knowledge may interfere with a relationship between the child and a stepfather or adoptive father; or it may wound the child by underlining his absent father's shortcomings and rejection of the child, see *Doe v. Norton*, 365 F. Supp. at 85 (concurring opinion); Affidavit of Edward Zigler, (App. 126-127), Affidavits of "Mary Brown," (App. 40), "Frances Foe" (App. 45-46).

The State's claim of the effect of Section 52-440b, then, is shown by the record to be at odds with reality. It is also undercut by Connecticut's failure even to provide means for children to receive the benefits it asserts Section 52-440b will confer. The statute does not provide for disclosure of the name of the putative father *to the child*, for whom the statute will therefore lead to knowledge only via the humiliating route of public gossip. Nor has Connecticut conferred any parental rights on putative fathers. Conn. Gen. Stats. §45-43. The unwed father therefore has only such claims to enjoy a parental relationship with his child as may be recognized by the mother, or by the courts in light of *Stanley v. Illinois*, 405 U.S. 645 (1972). Neither of those claims depends upon a paternity adjudication under Section 52-440b.

b. Section 52-440b denies the child the opportunity to prove that his interests are not served, establishes an irrebuttable presumption contrary to fact, and thereby violates the child's right to due process of law.

Compulsory disclosure and prosecution under Section 52-440b may serve the financial and other interests of children in some cases and the financial interests of the State in some others. But in many more cases the proceeding serves no interest at all. By failing to provide for individualized determinations, the statute sweeps too broadly. It amounts to an irrebuttable presumption that the interests of the child are served (or at least not harmed) in every case, a presumption that applies even when the evidence as to a particular child might be wholly to the contrary.

Indeed, this presumption is not merely latent in the statutory scheme; it is reinforced by the policies of the Welfare Commissioner, the official empowered to demand disclosure and prosecute women under Section 52-440b. He demands that every woman on welfare make disclosure; he retains counsel for the purpose of prosecuting those who do not; and he only pays counsel who either elicit disclosure or bring a prosecution. See Stipulation No. 1 (App. 56); Deposition of Caroline Packard (App. 80-81, 90).[14]

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[14]Counsel for the Commissioner left no doubt at the hearing below that the statute, like the Commissioner's policy, rested in his view on a conclusive presumption. He was asked by the Court, "Are you saying that in every case the financial benefit to be derived from knowing the name of the father will always outweigh the factors such as emotional health, family stability, fear of violence and everything else that might cut against disclosure?" Transcript of Hearing at 50. The reply was unequivocal:

> "I think the rights of the children really demand that the action be brought in one hundred per cent of the cases, or

The court below suggested that the presumption was not in fact irrebuttable, that it might be open to the mother or child to persuade the circuit court to refuse to order disclosure in a particular case, on the ground that disclosure would not help, and might harm, the interests of the child. But the court below noted that the statute does not require the circuit court to consider the interests of the child, 365 F. Supp. at 74 n.14, and the State itself contends that the statute does not even permit litigation of that issue at the statutory hearing. Transcript of Hearing at 45.

Certainly the statutory procedures are designed to discourage consideration of the interests of the child. There is no provision for representation of the child in a Section 52-440b proceeding. When Connecticut recognizes that interests of the child warrant protection, it is generous in providing counsel. Children have counsel in every juvenile court proceeding which may affect their interests. Conn. Gen. Stats. §17-66b; Rules for the Juvenile Court, Connecticut Practice Book (1963), Section 1122 (effective July 1, 1974). Each minor whose rights "may be substantially affected in a proceeding before a court of probate" has a guardian ad litem appointed to represent those interests. Courts of Probate, Rules for Practice and Procedure, Rule 4, Connecticut Law Journal, April 30, 1974. In fact, appointment of a guardian ad litem is authorized by statute for any child who "may have an interest" in any proceeding in probate court, the court of common pleas, or superior court—*but not in a proceeding in circuit court.* Conn. Gen. Stats. §45-54. Connecticut has

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substantially all the cases that you can reasonably do it in. . . I just think that the establishment of this status with the children outweighs any negative factors that are undoubtedly present in some of the cases." Transcript of Hearing at 51.

selected as the forum for Section 52-440b hearings. then, the only trial court in which children are *not* accorded the protections of counsel or a guardian ad litem.

Predictably, Circuit Court judges have not found consideration of the interests of children to be part of their task at Section 52-440b hearings. The fact that the State is supporting the child has invariably been regarded as a sufficient reason to compel disclosure and prosecution by the mother. See Br. App. 7a, *et seq.*

To summarize: The State has agreed that the interests of the child are not a proper subject of litigation at a Section 52-440b hearing; the District Court found that such consideration was not required by the statute; there is no provision in the statute for the interests of the child to be expressed or considered; and those interests have in fact not been considered or expressed as a possible limit on the State's recoupment power. In short, no consideration of the interest of children is provided in the statute.

The conclusive presumption embodied in Section 52-440b is not necessarily true; nor is it even true in most cases. Since it affects the important interest of family privacy, without allowing for an opportunity to test its validity in a particular case, the presumption, and with it the statute, must fall as violative of the Due Process clause of the Fourteenth Amendment.[15]

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[15]It should be noted that while this brief argues that the State's financial interest is always insufficiently substantial to override the interest of the child in nondisclosure when disclosure would harm the child, it is not necessary to go so far to determine that Section 52-440b is unconstitutional. The analysis followed by Judge Newman in his concurring opinion leads to the same conclusion. Judge Newman saw the balance that needed to be struck as being between the privacy interests primarily of the mother and the State's interest in enforcing the support obligation, including its fiscal interest in recoupment. But, as Judge Newman points out, even giving that fiscal interest

In *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791 (1974), the Court found that the State's use of an irrebuttable presumption violated the constitutional maxims that intrusions into protected liberty must not "sweep too broadly, See *Shelton v. Tucker*, 364 U.S. 479 . . .," ___ U.S. at ___, 94 S. Ct. at 798, or "needlessly, arbitrarily, or capriciously impinge upon [a] vital area of . . . constitutional liberty." ___ U.S. at ___, 94 S. Ct. at 796. In *LaFleur*, the Court confronted a regulation that impinged on personal liberty in the important area of marriage and family life, as does the Connecticut statute at issue here. The regulation in *LaFleur* required teachers to stop working in their fifth or sixth month of pregnancy. The Court found that the statute could not be adequately justified by the State's interest in keeping physically unfit teachers out of the classroom, because "the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter." ___ U.S. at ___, 94 S. Ct. at 799. A fixed cut-off date therefore functioned as an irrebuttable presumption that all teachers were incapacitated by a certain time in pregnancy when many demonstrably were not. The presumption, said the Court, was impermissible and denied due process of law.

Similarly in *Stanley v. Illinois*, 405 U.S. 645 (1972), the Court evaluated a statute which affected personal

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enough weight to overcome the claim to family privacy in some instances does not conclude the inquiry. Mothers and children are still entitled to a determination of whether the State's interests, including its financial interest, in each particular case are sufficiently weighty to overcome their privacy interests.

Using Judge Newman's analysis does not alter the conclusion that the statute is unconstitutional. The principal vice of the statute is precisely that it provides no requirement or assurance that the competing interests be developed at a hearing or that establishment of the constitutional interests of mothers or children precede enforcement of the statute.

rights in the areas of marriage and family life. The statute in *Stanley* provided that "parents" were entitled to custody of their children absent a showing of neglect, and excluded illegitimate fathers from the definition of "parent." The court held that the exclusion could not be justified by the State's interest in protecting children from unfit parents, for that would amount to an irrebuttable presumption that illegitimate fathers are unfit: "[T]he State registers no gain toward its declared goals when it separates children from the custody of fit parents. Indeed, if Stanley is a fit father, the State spites its own articulated goals when it needlessly separates him from his family." 405 U.S. at 652-53. It concluded that the State's purpose could be served while protecting Stanley's interest "in the children he has sired and raised," 405 U.S. 651, by affording Stanley a hearing on the issue of fitness before he was deprived of the care and custody of his children. And in *Stanley* as in *LaFleur*, the Court determined that the other interests asserted by the State in support of its policy were simply too insubstantial to authorize otherwise unneccessary incursion into the liberty protected by the Fourteenth Amendment.

So in this case it is only the State's interest in the welfare of children which can justify intrusion into the liberty of those children and their mothers. But that interest is served only in some cases, and in others it is unaffected or even harmed. As in *LaFleur* and *Stanley*, the State's interest in the welfare of children could be fully protected by an individualized hearing at which the State, the mother, and the child could produce evidence on the issue of whether compelled disclosure, compelled prosecution or both would serve the interests of the child.

On occasion, some state interests have been found sufficient to justify an invasion of the right to family

privacy, but these have involved claims very different from those at issue here. In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Court upheld a state law limiting the hours and the nature of child labor, on the ground that such laws serve the State's interest in protecting children from the harmful effects of excessive labor on their physical and mental growth. No claim was made in that case that the State's interest would be served in some cases and not in others, and that a hearing should be held to determine which cases were appropriate for the application of the child labor laws. The challenge to the statute was based, rather, on the claim that even in a case where the State's interest might be served, the child should nevertheless be exempt on the ground of religious freedom.

Similarly in *Wyman v. James*, 400 U.S. 309 (1971), the Court upheld a statute authorizing a welfare caseworker to make periodic visits to the home of the client, on the ground that it served the State's interest in protecting the child and determining whether the welfare grant was used for the child's benefit. Once again, there was no claim that the State's interest would be served only in certain cases, and a hearing should be held to determine which ones. The claim was, rather, that even if the State's interest would in fact be served, the client should be immune to search in the absence of probable cause.

In this case, on the other hand, the children make no blanket claim of immunity from the operation of the statute. The claim is simply that the State's asserted justification for the statute exists in some cases, and in many others it does not. Rather than presuming that it exists in all cases, the State has an obligation under the Due Process Clause to provide a hearing at which the issue can be determined in each case.

The District Court attempted to distinguish irrebuttable presumptions of fact from what it termed a

legislative "value judgment about the responsibility—financial and perhaps moral—of all fathers." 365 F. Supp. at 74-75 n.14. But the "value judgment" of the statute is in fact more specific: that all fathers of illegitimate children on welfare ought to be identified and compelled to pay support irrespective of the consequences of disclosure or compulsion on the children and their mothers. If this judgment reflects in turn a legislative determination that fattening the State's coffers justifies harm to children and invasion of their fundamental rights to privacy, that determination is not constitutionally permissible. The State is not free to invade rights of children given special constitutional protection, nor to jeopardize the child's welfare, which is "paramount," *Wyman v. James*, 400 U.S. 309, 318 (1971), with such slim justification. See Section I(B)(1), pp. 18-22, *supra*.

If, on the other hand, the State's "value judgment" reflects a determination that the interests of children will be served by the statute, it clearly rests on a presumption of fact which is often not true.

In cases where the presumption is not true, the State's compelling interest in the welfare of children is not served. Indeed, the State then has an interest, equally compelling, in avoiding disclosure or prosecution of a paternity action. Restriction of the statute only to cases where compulsion serves the interest of the child advances the State's compelling interest.

In rejecting the claim that due process requires individualized determinations, the District Court relied principally on grounds of administrative impracticality: "To make matters turn upon *ad hoc* inquiries into the actual state of mind of particular women, thereby encumbering Mann Act trials with a collateral issue of the greatest subtlety, is hardly an acceptable solution." *Wyatt v. United States*, 362 U.S. 525, 530, 1960, quoted at 365 F. Supp. 74 n.14. But here the issue of the best interests of the child is not collateral: it is

central and fundamental to the purpose and working of the statute. What was at issue in *Wyatt* was the right of a witness to claim an evidentiary privilege in a criminal jury trail under a statute whose application was not challenged. Here the issue is the constitutional right of mothers and children to resist the application of the statute itself.

Cases rejecting legislative irrebuttable presumptions have all pointed to the availability—present or potential—of workable procedures for individualized determinations. *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791, 800 n.14 (1974), *United States Department of Agriculture v. Murry*, 413 U.S. 508, 517 n.2 (1973) (Stewart, J., concurring), 518 (Marshall, J., concurring); *Vlandis v. Kline*, 412 U.S. 441, 451-452 (1973); *Stanley v. Illinois* 405 U.S. 645, 657 n.9 (1972); *Bell v. Burson*, 402 U.S. 535, 542-543 (1971).

Here the mechanism for an individualized determination is readily available—it is the §52-440b proceeding itself. All that need be done is to require judges to consider the child's interests, and to provide representation for the child, so that his interests may be developed. The question of the best interests of the child is peculiarly susceptible to resolution on a case-by-case basis, rather than by a single legislative determination. In matters of child custody, and cases involving neglected, dependent, and delinquent children, Connecticut assigns determination of the best interests of the child to its courts for individualized consideration rather than attempting to establish those interests by legislative classification and presumption. See Conn. Gen. Stats. §§17-59, 17-62, 17-68; Public Act 73-373, §§15-19, 24, 26, 31, 37.

The right to a hearing when important interests are at stake is the most fundamental element of due process of law. *Stanley v. Illinois*, 405 U.S. 645,

657-658 (1972); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). Connecticut has foreclosed a hearing on the vital issue of the best interests of the child while it seeks to rely on those interests to justify its intrusion into the most intimate aspects of family life. When private interests of this magnitude are involved, the State may not proceed by presumption. *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 94 S. Ct. 791, 799-800 (1974); *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1972). Its failure to provide children a hearing deprives them of due process of law.

II.

SECTION 52-440b DISCRIMINATES AGAINST THOSE ILLEGITIMATE CHILDREN WHO ARE POOR BY PROVIDING THAT ONLY A POOR CHILD IS SUBJECT TO COMPELLED DISCLOSURE AND PROSECUTION OF HIS FATHER WITHOUT REGARD TO THE IMPACT OF COMPULSION ON THE CHILD.

Section 52-440b appears to authorize compelled disclosure of the paternity of all illegitimate children. But in its enforcement mechanism the statute makes a critical distinction between children receiving welfare and all other children. The result of this distinction is that a welfare child is subject to compelled disclosure without any determination of the child's best interests, while any other child can be subjected to compelled disclosure only after a court has made a preliminary determination of his best interests, and a guardian or guardian ad litem has concluded that the suit will in fact serve the child's interests. This distinction denies illegitimate children who are poor the equal protection of the laws.

The distinction arises in the following way. For children who are recipients of public assistance, the statute authorizes the state Welfare Commissioner to bring the suit to compel disclosure. Similarly, for children who receive general assistance, the statute authorizes the town selectman, who is the administrator of the general assistance program, to bring the suit. But for children who are not on welfare, the statute confers the authority to bring suit only on a guardian or guardian ad litem. This distinction has two important consequences.

First, under Connecticut law the mother herself is the guardian of an illegitimate child, unless a court finds that the child's interests require the appointment of a guardian or guardian ad litem. Conn. Gen. Stats. §§45-43, 45-54. Thus, in the case of a child who is not on welfare, no third party has the power to file suit against the mother to compel disclosure, unless a court has determined that the child's interest requires the appointment of a guardian for the purpose of deciding whether to file the suit. In the case of a welfare child, on the other hand, no judicial determination is necessary to authorize a third party to file suit to compel disclosure.

Second, if a guardian is appointed for the purpose of deciding whether or not to compel disclosure, the guardian is obligated to make that decision solely on the basis of the child's best interest. In the case of a welfare child, however, for whom the decision is made by the welfare commissioner or the town selectman, the decision-maker is authorized to consider not only the interest of the child but also the possible conflicting interest of the Town or the State in the financial contributions of the putative father. Indeed, the interest of the child may be not only secondary but irrelevant; the defendant interprets Section 52-440b to deprive him of discretion to decline to enforce a support

obligation. Thus department policy requires prosecution of every mother without regard to the best interests of her children. Stipulation 1 (App. 56); Deposition of Caroline Packard (App. 80-81, 90).

A welfare child, then, is denied the two assessments of his interest which would be made for any other child: first, a preliminary judicial determination, and then a determination by a guardian that his interest would be served by compelled disclosure.

In assessing a legislative discrimination under the Equal Protection Clause, it is necessary to consider the nature of the classification, the individual interest affected by the classification, and the state interest asserted to justify it. See *Memorial Hospital v. Maricopa County*, ___ U.S. ___, 94 S. Ct. 1076, 1080 (1974); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 173 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 668-70 (1966).

The nature of the classification is a discrimination based on poverty. Those illegitimate children who receive some form of welfare assistance are treated differently from those who do not. This Court has of course invalidated under the Equal Protection Clause a long line of distinctions based on poverty, see, *e.g.*, *Tate v. Short*, 401 U.S. 395 (1971); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Douglas v. California* 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956), and has reiterated that classifications based on wealth are constitutionally disfavored. *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 807 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. at 668. The distinction drawn by Section 52-440b is even more clearly invidious than the distinctions struck down in *Tate*, *Harper*, *Douglas*, and *Griffin*. For in those cases the discrimination against the

poor was not explicitly made by statute; it simply resulted from the fact that the State failed to provide a benefit to the poor that was available for purchase by the rich. In this case, however, the State has explicitly established for the poor a set of rules different from and harsher than those for the rich. There can be no clearer instance of a discrimination based on poverty.

The interest affected by the classification in this case is plainly substantial: it is the child's interest in protecting his privacy, his psychological well-being, and the stability of his home from the possible adverse effects of compelled disclosure and litigation over his paternity and support. See pp. 9-17 *supra*. It might be argued that this interest of the child is not substantially affected at all, that it is protected by a "sound judicial discretion" in the trial court to refuse to order disclosure. The statute does not, however, direct the trial judge to exercise his discretion in favor of the interests of the child. Moreover, even if it did, the welfare child would still be disadvantaged by the absence of an advocate for his interests. For in the case of any other child, a guardian decides whether compelled disclosure serves the child's interests, and if he thinks not, there is no suit to compel disclosure. In the case of the welfare child, however, the suit proceeds, and while the judge may have discretion to apply his own view of the child's best interest, no guardian or other advocate for the child will urge this course upon him.

What plausible bases are there for this discrimination against the poor? It might be argued that for a poor child financial support from his father is necessarily more valuable than any psychological benefit obtained by avoiding disclosure or litigation; a child who is already adequately supported, on the other hand, can afford to sacrifice additional support for less tangible benefits. On that theory, then, there is no need for a

judgment about the best interests of a poor child, because it will always be in his best interest to seek support. That argument overlooks the fact, however, that support payments from the father provide no financial benefit to the child on welfare, unless the father can support the child at a level that exceeds the level of welfare support. It also overlooks the possibility that any marginal financial benefit to the child may be outweighed in the particular case by the risk of serious psychological harm to the child. This possibility is recognized by the statute in the case of the non-welfare child, for whom a judgment is made by a parent or guardian, taking all factors into account. The non-welfare child may have precisely the same financial needs as the welfare child—their level of support may in some cases be identical—and yet the statute provides that for the welfare child, the pursuit of additional financial support must always be paramount. The financial needs of the child fail to justify the State in disregarding the psychological needs of an illegitimate child on welfare, when the State recognizes those needs for all other illegitimate children.

It might alternatively be argued that the distinction is justified not by the interests of the children, but by the fiscal interests of the State. In the case of children on welfare, the State has an interest in finding the father and enforcing his support obligation, in order to recoup past state expenditures and avoid future ones. See Conn. Gen. Stats. §§17-83e, 17-324. But the State's interest in recoupment bears no rational relationship to the precise discrimination worked by Section 52-440b. For the statute provides that the interests of children on welfare shall be not only subordinated to the State's interests, but wholly denied expression. The court below suggested that there is room in the enforcement of the statute for courts to consider the interests of the children. But while all children ought to receive that consideration, the statute singles out welfare children

and denies them the means of presenting their interests to the court. If all children are equally entitled to have their interests considered, there can be no basis for denying one class of children the representation necessary for adequate expression of their interests. In resolving the conflict between the interests affected by disclosure, the weight of the State's financial interest is wholly unrelated to the question whether the child's interests should be adequately represented and expressed.

Moreover, on any view of the statute, the protection of the State's treasury is not a substantial enough state interest to justify a discrimination that affects important personal rights, and that is based on the disfavored ground of poverty. Whatever the legitimacy of considerations of economy in cases where legislative classifications affect less important interests, the State's interest as a potential creditor cannot justify a discrimination which deprives poor children of the fundamental right to have their family privacy invaded only after a consideration of the impact of that invasion on their well-being. See *Memorial Hospital v. Maricopa County*, ___ U.S. ___, 94 S. Ct. 1076 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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June 19, 1974

CERTIFICATION

This is to certify that a copy of the foregoing Brief was mailed First Class Mail, Postage Prepaid, by depositing same in a United States Mail Box on June 20, 1974, to each of the following:

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APPENDIX A

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Sec. 52-435a. Petition by mother or expectant mother. Continuance of case. Evidence. Proceedings to establish paternity of a child born or conceived out of lawful wedlock including one born to, or conceived by, a married woman but begotten by a man other than her husband, shall be instituted by a verified petition of the mother or expectant mother, with summons and order, filed in the circuit court for the circuit in which either she or the putative father resides. Upon the filing of such petition, said court or any judge assigned to said court shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued, requiring the putative father to appear in court at a time and place named therein to show cause, if any he has, why the prayer of such petition should not be granted. Such petition, summons and order shall be in a form approved by the judges of the circuit court. In the case of a child or expectant mother being supported wholly or in part by the state, service of such petition may be made by any investigator employed by the state welfare department. No such petition shall be brought after three years from the birth of such child, or after three years from cessation of contribution toward support of the child by the putative father, whichever is later; provided the provisions of section 52-590 shall be applicable to this section. If such putative father fails to appear in court at such time and place, the court may hear the petitioner and enter such judgment and order as the facts may warrant. Such court may order continuance of such hearing; and if such mother or expectant mother continues constant in her accusation, it shall be evidence that the respondent is the father of such child.

Sec. 52-435b. Testimony of mother. The mother of any child for whom adjudication of paternity is sought

in paternity proceedings shall not be excused from testifying because her evidence may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act about which (1) she testifies in connection with such proceedings, or (2) she makes any statement prior to such proceedings with respect to the issue of paternity.

Sec. 52-435c. Testimony of putative father. The putative father of any child for whom adjudication of paternity is sought in paternity proceedings shall not be excused from testifying because his evidence may tend to disgrace or incriminate him; nor shall he thereafter be prosecuted for any criminal act about which (1) he testifies in connection with such proceedings or (2) he makes any statement prior to such proceedings with respect to the issue of paternity.

Sec. 52-439a. Withdrawal or settlement. No such petition shall be withdrawn except upon approval of a judge assigned to the circuit in which the petition was brought. Any agreement of settlement, before or after a petition has been brought, other than an agreement made under the provisions of section 52-442a, between the mother and putative father shall take effect only upon approval of the terms thereof by a judge of the circuit court assigned to the circuit in which the mother or the putative father resides and in the case of children supported by the state or the town, to the approval of the welfare commissioner or the attorney general. When so approved, such agreements shall be binding upon all persons executing them, whether such person is a minor or an adult.

Sec. 52-440a. Action by state or town. The state or any town interested in the support of a child born out of wedlock may, if the mother neglects to bring such petition, institute such proceedings against the person accused of begetting the child, and may take up and pursue any petition commenced by the mother for the maintenance of the child, if she fails to prosecute to final judgment. Such petition may be made by the welfare commissioner of the town welfare administrator on information or belief. The mother of the child may be subpoenaed for testimony on the hearing of the petition.

Sec. 52-442. Judgment and order of court. If the defendant is found guilty, the court shall order him to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able, and to pay a certain sum weekly until the child attains the age of eighteen years; and the court shall ascertain the expense of lying-in and of support and maintenance of the child until the time of rendering judgment, and order him to pay the amount thereof to the complainant, or, if a town or the state has paid such expense, to the town or the state, as the case may be, and shall grant execution for the same and costs of suit taxed as in other civil actions, together with a reasonable attorney's fee; and may require him to become bound with sufficient surety to perform such orders for support and maintenance and the expense of lying-in and to indemnify the state of the town chargeable with the support of such child from any expense for its maintenance. If he fails to comply with any such order, the court may commit him to a community correctional center, there to remain until he complies therewith; but, if it appears that the mother does not apply the weekly allowance paid by him

toward the support of such child, and that such child is chargeable, or likely to become chargeable, to the town where it belongs, the court, on application, may discontinue such allowance to the mother, and may direct it to be paid to the selectmen of such town, for such support, and may issue execution in their favor for the same. The provisions of section 17-323a shall apply to this section. The clerk of the court which has rendered judgment for the payment of money for the maintenance of any child under the provisions of this section shall, within twenty-four hours after such judgment has been rendered, notify the selectmen of the town where the child belongs. Any order for the payment of support for any such child may at any time thereafter be set aside or altered by any court issuing such order. Failure of the defendant to obey any order for support made hereunder may be punished as for contempt of court and the costs of commitment of any person imprisoned therefor shall be paid by the state as in criminal cases.

Sec. 52-442a. Acknowledgment of paternity and agreement to support; judgment. (a) In lieu of or in conclusion of proceedings under section 52-435a, the written acknowledgment of paternity executed by the putative father of the child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the child and filed with the circuit court for the circuit in which the mother of the child or the putative father resides shall have the same force and effect as a judgment of that court; and an agreement to support the child by payment of a weekly sum until the child attains the age of eighteen years, together with provision for reimbursement for lying-in expense, accrued maintenance and reasonable expense

of prosecution of the petition, when filed with, and approved by a judge of, said court, at any time, shall have the same force and effect, retroactively or prospectively in accordance with the terms of said agreement, as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the family relations division of the circuit court. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the ground that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the court of any acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons, signed by him or by the clerk or assistant clerk of said court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter judgment for support of the child by payment of a weekly sum until the child attains the age of eighteen years, together with provision for reimbursement for lying-in expense, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. The prior judgment as to paternity shall be res adjudicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the family relations division of the circuit court.

Sec. 52-442b. Filing of agreements. Disclosure. All agreements entered into under the provisions of sections 52-439a and 52-442a shall be filed by the clerk of the circuit court of the circuit in which they are entered, and no information concerning any such agreement, the parties thereto or the contents thereof may be disclosed other than to the state or a municipal welfare administrator except on order of a judge assigned to said circuit.

Sec. 52-442c. Enforcement of prior orders and agreements. The circuit court shall have jurisdiction to enforce and modify all paternity orders and paternity support agreements issued by or filed with the court of common pleas prior to or after October 1, 1963, and existing on July 1, 1965, and, on application to said circuit court for enforcement or modification and upon request by the clerk of said court to the clerk of the appropriate common pleas court, the common pleas court file shall be transferred to the circuit court and there docketed for all subsequent proceedings.

Sec. 52-443. Continued liability of person committed for failure to comply with order. No person committed to a community correctional center for failure to comply with an order of the court as provided in sections 52-435a, 52-440a and 52-442, or any of them, shall be entitled to any of the privileges allowed other prisoners on civil process, or to take the oath provided for poor debtors, within six months from the date of such commitment, but shall be kept at hard labor during such six months; and the mother of such child, the state or the town chargeable with its support

may, at any time after the liberation of such prisoner, or after his taking said oath, recover the sum or sums due from him in pursuance of such order of court.

Sec. 52-444. Support of defendant while imprisoned. The complainant shall not be required to pay or give security for the support of the defendant during his confinement in a community correctional center, nor shall such defendant be discharged from imprisonment by reason of payment or security not being made or given for his support, but the jailer shall furnish such support and may recover the cost of the same from such defendant, or, in case of his inability to pay such cost, from the town where he belongs; and, if he belongs to no town in this state, such cost shall be paid by the state.

Sec. 52-445. Wage execution. Executions in accordance with section 52-362 shall be available in paternity proceedings.

CASE I

A.A.

April 2, 1973, Middletown, Conn.

THE COURT: A.A., how old are you?

THE DEFENDANT: Twenty-five.

THE COURT: Is this lady willing to disclose the name of the father?

MR. MURPHY: Your Honor, as you probably know there is currently pending in the Federal Court an action on Section 52-440b. In fact, today is the date of

the hearing on the matter. I would respectfully ask this Court to continue this matter pending the outcome of the case.

THE COURT: Is this the United States Court in Hartford?

MR. MURPHY: Yes, it is, and the issue of this case. . . .

THE COURT: The only trouble is that their decision may not be binding on this court. I will continue it for a week or a short stay. I'll give you a short stay because we are not going to wait until that case goes to the Supreme Court of the United States. There are various district courts and may differ throughout the country on your decision. I found that on the Court of Appeals. They are not binding on my court unless I agree with it.

MR. MURPHY: I don't believe the State of Connecticut is going to be adversely effected by the continuance. The child is only eighteen months old and there is exactly a year and a half to one on the statute, the limitation to a paternity action. Your Honor, I would ask at least one month.

THE COURT: I will give you a month. But if that decision is unduly delayed, as I have said before, unless I agree with the decision it is not binding on me because it is a trial court level collection. What particular date?

THE CLERK: May 1st.

(Whereupon, the matter was continued to May 1st, 1973.)

A.A.

May 7, 1973, Middletown, Conn.

MR. CARTA: A.A., your Honor, that may go off. That person is no longer receiving state aid.

THE COURT: May go off.

(Whereupon, the matter was concluded.)

CASE II

S.B.

April 2, 1973, Middletown, Conn.

MR. CARTA: Are you willing to disclose the name of the father?

THE DEFENDANT: No.

THE COURT: You are not?

THE DEFENDANT: No.

THE COURT: All right, take the witness stand. . . .S.B., . . . New Britain, Connecticut, being duly sworn by the clerk, testified as follows:

BY MR. CARTA:

Q. Miss B, are you the mother of a child born on January 21, 1973? A. January 12.

Q. 1973? A. 1971.

BY THE COURT:

Q. S.B. A. Right.

Q. When was he born? A. January 12, 1971.

BY MR. CARTA:

Q. Have you had a child born this year, January of this year? A. No.

Q. That's your only child? A. Yes.

Q. Now, Miss B, have you been on public assistance from the State of Connecticut? A. Yes.

Q. Are you presently on public assistance? A. I was supposed to get a check on the first of the month and I didn't because I'm working.

Q. When did you start working? A. Last Thursday.

Q. Have you been on public assistance in the past? A. Yes.

Q. Now, have you been as a result of the birth to you of this boy? A. Yes.

Q. Now, you reside at . . . , New Britain? A. Yes.

Q. That is still your present address? A. Yes.

Q. Have you been questioned by the Welfare Department in New Britain concerning the father of the child? A. Yes.

Q. Will you tell his Honor the identity of the father of the child? A. No.

BY THE COURT:

Q. You will not? A. No.

Q. Do you know what the statute says? Anyone who refuses to disclose the name of the father could be held in contempt of court and could be fined not more than $200 and imprisoned not more than one year or both. Do you understand that? A. Yes.

Q. And you still refuse? A. Yes.

Q. And the child is presently a recipient of the State Welfare? A. No.

Q. You didn't get one the first of this month. Was it ever terminated? Did you get the last check? A. No. You know I'm working. They found me a job and I was supposed to have the check on the thirty-first.

Q. Do I understand now that you are working this child is going off welfare? A. Yes.

THE COURT: Well, why don't you check that matter out, check whether this child is a recipient now. The statute says at the present is a recipient. You ought to amend your petition.

MR. CARTA: I think at the time I received notice—you just began working?

THE DEFENDANT: Yes.

THE COURT: Continue this also to May first. Check that because she would have a right to refuse even if the statute is constitutional if the child is not presently a recipient.

(Whereupon, the matter was continued to May 1, 1973.)

CASE III

R.C.

October 2, 1973, Middletown, Conn.

Before: The Honorable Eli L. Cramer, Judge.

R.C., Meriden, Connecticut, being duly sworn by the clerk, testified as follows:

THE COURT: Do you have counsel, Miss C?

THE DEFENDANT: No, I haven't.

THE COURT: Do you want counsel?

THE DEFENDANT: No, I don't believe it's necessary.

THE COURT: You don't feel it's necessary?

THE DEFENDANT: No.

THE COURT: And you wish to appear at this time on your own behalf without counsel?

THE DEFENDANT: Right.

THE COURT: And you don't wish counsel appointed for you?

THE DEFENDANT: No.

THE COURT: All right. Do you wish to consult with a lawyer? There is a lawyer present and I can ask him to give you advice.

THE DEFENDANT: I don't believe it is necessary.

THE COURT: You don't wish a lawyer to act as a friend of the court and this gentleman is here and is very familiar with the subject if you want to discuss it for a moment. Do you want to take a few moments to discuss it?

MR. CARTA: I think that would be a good idea. I discussed this matter with this lady.

THE COURT: This gentleman is a lawyer who is familiar with statutes, familiar with their implications. Your name, for the record.

MR. MILLER: Donald Miller, your Honor.

THE COURT: And a member of the Middletown Bar is going to discuss this matter with you. You are not being appointed but merely as amicus curiae in this case. We will take a few minutes.

(At 2:45 o'clock a ten minute recess was taken.)

AFTER RECESS

THE CLERK: Miss C, do you want to step down here please?

THE COURT: She has been sworn?

THE CLERK: Yes, she has been sworn, your Honor.

BY MR. CARTA:

Q. Miss C is your present address .... A. My name is Mrs. C.

Q. I beg your pardon. Is your present address ... Meriden? A. Yes, it is.

Q. Are you presently on State aid? A. I receive $106.89 a month from the State.

Q. Mrs. C, on or about November 1, 1971, did you give birth to a daughter? A. On November the first, 1971, yes.

Q. Mrs. C, are you able to day to identify or are you willing and able today to identify the father of your daughter? A. I would be willing if I knew. But I don't know so I can't.

Q. Is it your testimony therefore that you do not know? A. I do not know the name of my child's father.

Q. Mrs. C the birth date of Jennifer was November 1, 1971. Is that correct? A. Yes.

Q. That would place the date of conception somewhere around January of 1970? A. Yes, January.

Q. It was January, 1971? A. Yes.

Q. Do you recall some of your male companions during that period of time? A. No. I can truthfully say

that I do not remember. It was an affair that I have wanted to put out of my mind and I do not know.

Q. You don't know this individual's name? A. No, I don't. I believe at the time that it was a false name.

Q. Well, do you recall the name that he did give you? A. No, I don't.

Q. Do you recall the address of this individual? A. No, I don't.

Q. Where were you living at the time? A. In Meriden at the same address that I'm at at present.

Q. Did you know that he was living in Meriden? A. No, I knew that he was living somewhere in the Wethersfield area or I was told that is where he lived.

Q. And you have no remembrance, no memory at this time of the identity, the name of that person? A. No, I do not.

Q. Can you describe that person? A. Well, I could describe him. He was about forty-six, forty-seven, approximately five feet eleven, light complected, light hair, reddish, sort of auburn hair, and other than that I couldn't say too much about him.

Q. Well, Mrs. C you have described him fairly well considering the length of time that has passed. Is it your testimony now. . . A. Let me say this, I mean, the type of a person that is an unpleasant person, I might remember this name. I will associate a person I can recall them by sight but never be able to hook a name to that person.

Q. Mrs. C, how frequent, how many times did you see this person, was he a frequent companion? A. I saw him four times.

Q. And you can't remember what he was known by that or the name that he gave you? A. No, I certainly do not. I wish I did but I don't.

Q. You recall the discussion I had with you yesterday in the lawyers' lounge in this building? A. I certainly do.

Q. Didn't you indicate to me that even if you knew the name you wouldn't give the name? A. I didn't say I wouldn't give the name; I said I would consider it a gross intrusion of my privacy to have to give the name.

THE COURT: Mrs. C. let's stop playing games. I'm going to read to you the law under which I am proceeding which compels disclosure of the putative father. I will read it to you and you listen carefully. You just listen.

I will read it so it will be a matter of record. The mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found, if you know, not to be issue of the marriage terminated by a divorce decree or by decree of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner, if such child is a recipient of public assistance, or to a selectman of a town in which such child resides, if such child is a recipient of general assistance, or otherwise to a guardian ad litem of such child, such mother may be cited to appear before any judge of the Circuit Court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child. And this is why you are here. Now (b) any woman having been cited to appear before a judge pursuant to subsection (a), fails to disclose or fails to prosecute a paternity action may be found to be in contempt of Circuit Court, fined not more than $200 and imprisoned not more than one year or both. This is an act of the Legislature and we are not here to play games. It has been upheld by the three judge panel—and I am giving you fair warning, Mrs. C that I don't want any games played. Disclose the name. You are under

oath. Now, you have five minutes to do it. I don't want any speeches, just disclose the name.

THE DEFENDANT: I do not know. I am under oath in the court of the State of Connecticut and I can truthfully say I do not know the name of my child's father.

THE COURT: What was the name under which he was known when you went with him?

THE DEFENDANT: That I can truthfully say I do not recall either.

THE COURT: Counsel, was there some information given to you yesterday that this lady said she wouldn't disclose the name?

MR. CARTA: No, your Honor.

THE COURT: Did you tell this to the lawyer yesterday that you wouldn't disclose the name?

THE DEFENDANT: I didn't say I wouldn't. I said if I did know, I would consider it a gross intrusion of my privacy to have to do so.

THE COURT: Well, I'm going to order you. This is no gross intrusion. Legislature has determined it is not and the United States District Court. I do not consider it a gross intrusion, nor the Legislature of the United States. Disclose the name and whether it intrudes on your privacy is something you can come forth yourself on later. If you don't, I will exercise the penalty by law and I am going to send you to jail.

THE DEFENDANT: Your Honor, you are trying to make me say something that I don't know.

THE COURT: You have made ambivalent statement that it is a gross intrusion on your privacy.

THE DEFENDANT: I feel that it is. Even having to be here is a gross intrusion of my privacy.

THE COURT: If you wish to discontinue it, discontinue being a ward of the State of Connecticut and they will have no right to compel you.

THE DEFENDANT: All right. I will do that if that is what the Court wants, then that is finished.

THE COURT: That can happen later. But you are receiving aid at the present time when you were served.

MR. MILLER: May we have this continued for a week possibly? I believe Mrs. C does honestly at this time not remember the name of this person but perhaps in a week she might be able to find out the name of the father.

THE COURT: I will continue it a week, and if you do not disclose . . .

THE DEFENDANT: Your Honor, if I don't know, how can I. . . .

THE COURT: You do know, Mrs. C. I don't believe you.

MR. CARTA: May that be two weeks to place that on the same day as the other ones?

THE COURT: You be back here two weeks from today with the other matters at two o'clock Mrs. C, and you have arrangements made if you do not disclose at that time, you have arrangements made to take care of your child.

THE DEFENDANT: I have two children, your Honor.

MR. MILLER: Your Honor, am I required to be back on that day as well?

THE COURT: Do you wish this young man to act as your attorney?

MR. MILLER: I should say I am with Legal Aid, one of which Mrs. C does not meet.

THE COURT: Do you wish some form of representation?

THE DEFENDANT: I will get counsel.

THE COURT: You will get your own?

THE DEFENDANT: I will get counsel.

THE COURT: Continued to October 16th, two o'clock.

(Whereupon, the matter was continued to October 16, 1973.)

Letter from Welfare Department to its attorney in the "R.C." case.

State of Connecticut
WELFARE department
139 Charles Street, Meriden, Conn. 06450 - (203) 238-1991

October 12, 1973

Mr. John J. Carta, Jr.
547 Main Street
Middletown, Conn.

Re: R.C.

Dear Sir:

Please be advised that we have closed this case as of 10/15/73. Please close your file on this case. Thank you!

Very truly yours,
Mrs. [Illegible]
Resources

CASE IV

WELFARE COMMISSIONER	:	TENTH CIRCUIT COURT
VS.	:	HELD AT NEW LONDON
M.B.	:	ON DECEMBER 20, 1972

Before:

HON. GEORGE E. KINMONTH, JR.

Appearances:

ROBERT D. TOBIN, ESQ.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No appearance for
the Defendant

* * * * *

THE COURT: The next matter is M.B. I am going to ask you the same thing. Do you want to get an attorney to represent you?

THE DEFENDANT: No, I don't.

THE COURT: Are you willing to divulge who the father is?

THE DEFENDANT: No, I am not.

THE COURT: You're not going to?

THE DEFENDANT: No.

THE COURT: You're on Welfare now?

THE DEFENDANT: My daughter is until the end of the year. You see, I am in school. I am in college. As soon as I finish this year of college, I won't be on welfare anymore, as soon as I start working.

THE COURT: In this particular matter, the statute says that you're subject to a year in jail or $200.00 fine if you refuse to divulge knowledge who the father of the child is.

THE DEFENDANT: Then I'd rather not have welfare at all.

THE COURT: I know, but there is a long bill back here that the State is interested in getting some of the money back. That is the purpose of this matter.

THE DEFENDANT: My mother and dad said they would pay for the whole thing. So it doesn't matter to me one way or the other.

THE COURT: You mean your mother and father are willing to pay the State what you already received on welfare in the care of this child?

THE DEFENDANT: I suppose so. That is what she told me. She said if it was a money matter, she would take care of it or my father would because I am living at home.

THE COURT: Well, I am telling you as you stand there in front of me that if you refuse to divulge the name of the father. . . .

THE DEFENDANT: I don't know what the name of the father is.

THE COURT: I can give you a year in jail or a $200.00 fine or both.

THE DEFENDANT: I don't know who the father is. I couldn't. . . .

THE COURT: Where do your mother and father live?

THE DEFENDANT: Pawcatuck, Connecticut.

THE COURT: What are their names?

THE DEFENDANT: Mr. and Mrs. J.B., Pawcatuck.

THE COURT: I think until you have some time to investigate this matter, I will continue it.

MR. TOBIN: Yes, your Honor.

THE COURT: And I want you to keep in mind what I just told you. The statute calls for a year in jail

or $200.00 fine if you refuse to divulge knowledge.

THE DEFENDANT: Yes, but what if I don't know then what to do.

THE COURT: Well, that seems a little illogical, if you don't know who you had relations with; who is the father of your child.

THE DEFENDANT: But I don't.

THE COURT: That is rather an intimate thing. You should pretty well know who it was. How much time do you want on this matter.

MR. TOBIN: Two weeks, if your Honor please.

THE COURT: Do you have the figure of how much she is in to the State for?

MR. TOBIN: We do.

MR. KIRKER: They only have the award, the money award, your Honor, not the total.

THE COURT: I think when you investigate, if you talk to her family, you better have the total figure; otherwise, this girl is not liable to be in school; she is liable to be in Montville. All right, we will continue this case for two weeks.

* * * * *

M.B. . . . called as a witness, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: M.B.

COURT CLERK: Where do you live?

THE WITNESS: Pawcatuck, Connecticut.

COURT CLERK: You may be seated.

DIRECT EXAMINATION BY
MR. TOBIN:

Q. Miss B. you are the mother of a child born March 20, 1972? A. Yes.

Q. Your child is receiving public assistance? A. Yes, she is.

Q. Would you tell the name and address of the father of this child? A. I don't know the address, but his name is J.T.

Q. J.T. A. Yes, he was living somewhere in Westerly, Rhode Island, but I am not sure where he is living now and I don't think he is working either.

Q. Was he attending school? A. No.

Q. Do his parents live in Westerly. A. I don't know where his parents live.

Q. Is he from Rhode Island? A. Bradford or some place around there, I am not positive.

Q. When was the last time that you have seen him? A. In August this past summer.

THE COURT: August of this year? A. Yes.

THE COURT: Where was he living then? A. He had a cottage at the beach somewhere, but I haven't associated with him at all.

THE COURT: Well, the child was born in March and you have seen him in August? A. Just to say hello to; no personal relationship at all. Nothing like that.

THE COURT: Where did you say his parents live? A. Somewhere past Bradford, Rhode Island. I don't know where. I don't even know his parents.

MR. TOBIN: Nothing further, your Honor.

THE COURT: All right, you're excused.

* * * * *

CASE V

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
	:	
VS.	:	HELD AT
	:	NEW LONDON
	:	
A.M.M.	:	ON DECEMBER
	:	20, 1972

Before:

HON. GEORGE E. KINMONTH, JR.

Appearances:

ROBERT D. TOBIN, ESQ.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No appearance for
the Defendant

* * * * *

THE COURT: You have heard what I have said. Are you willing to divulge knowledge who the father of your child is?

THE DEFENDANT: The father lives in England.

THE COURT: At least you can divulge knowledge who it is. That's all we are after.

THE DEFENDANT: Right now I prefer not to. I think I want to see an attorney about this.

THE COURT: All right. How much time do you want?

THE DEFENDANT: Two weeks–a week; I don't know.

THE COURT: All right, put this down for January 3rd. Now you heard me say that if you are

unwilling to cooperate, why I can give you a year in jail or $200.00 fine. Being on State aid, you most likely will get a jail sentence, if you don't want to cooperate. You better come back on January 3rd willing to do something.

THE DEFENDANT: Okay.

THE COURT: Continued to January 3rd.

* * * * *

A.M.M., called as a witness, having been first duly sworn, testified as follows:

COURT CLERK: State your name.

THE WITNESS: A.M.M.

COURT CLERK: Where do you live?

THE WITNESS: . . . , Groton.

COURT CLERK: Thank you. You may be seated.

DIRECT EXAMINATION BY
MR. TOBIN:

Q. Are you the mother of a child born September 27, 1972? A. Yes.

Q. The child is receiving public assistance? A. Yes.

Q. Will you disclose to the Court the name and address of the father of the child? A. R.M.R. He went back to England today.

THE COURT: His name is R? A. R.

THE COURT: He went back to England today? A. Yes.

THE COURT: Was he is the Navy? A. No, he works for the English Government.

THE COURT: Where was he living before he left? A. Well, up until the beginning of September he lived in . . . Niantic and he went back to England for a month. . . .

THE COURT: 7 what? A. . . . in Niantic and he went back to England for a month and came back here

in October on temporary duty until today to finish up the project he was working on for three years.

THE COURT: Who did he work with? A. . . . in New London. I can tell you where he works in England.

THE COURT: . . . A. He was an exchange scientist.

THE COURT: And he just left? A. Well, his plane leaves at 7:00 tonight.

THE COURT: His plane leaves at 7:00 tonight? A. Well, he's left. He is in New York right now.

THE COURT: What plane is he taking? A. I don't know. All I know is his flight is 7:00 tonight. I didn't ask him.

THE COURT: I don't know whether Welfare wants to go down to New York and board the plane or to go to England.

Q. I didn't get the last name on that.

Q. R. R. A. Like R. R.

THE COURT: And he last worked at the . . . .? A. I can tell you where he works in England; . . ., Dorset, England.

Q. Does he have any plans to return? A. Nothing definite; like he has no job here or anything.

MR. TOBIN: That is all I have, your Honor. . . . Has he ever given you any money toward the support of the child? A. I didn't want him to have any claim on the baby.

THE COURT: He knows it's his baby though? A. Yes, he has seen the baby.

THE COURT: He has seen the baby and knows it's his.

MR. TOBIN: Nothing further, your Honor.

THE COURT: All right, you may step down. You're excused.

* * * * *

CASE VI

WELFARE	:	TENTH
COMMISSIONER	:	CIRCUIT COURT
VS.	:	HELD AT
	:	NEW LONDON
	:	
A. Ar.	:	ON FEBRUARY
	:	1, 1973

Before:

Appearances:

Robert D. Tobin, Esq.
For the Welfare Commissioner
2 Union Plaza
New London, Connecticut

No apperance for the
Defendant

* * * * *

A. Ar. taking the witness stand, having been first duly sworn, testified as follows:
COURT CLERK: State your name.
THE WITNESS: A. Ar.
COURT CLERK: Where do you live?
THE WITNESS: . . . Groton.
COURT CLERK: Thank you. You may be seated.

DIRECT EXAMINATION
BY MR. SMITH:

Q. Miss Ar., you are the mother of a child born October 31, 1972? A. Yes.

Q. And your child was a recipient of public assistance at some time? A. Yes.

Q. Would you name the father of the child. A. No.

THE COURT: Will you name the father? A. No, I don't want to.

THE COURT: Well, under the statute you can serve a year in jail or be fined $200.00 if you refuse to, under oath. A. I don't want the father named.

THE COURT: You don't want the father named. Well, maybe if I give you a year in jail, you will think it over. That is what the statute says. If you refuse to divulge knowledge, you can spend a year in jail. A. I don't want the father named.

THE COURT: You'd better sit down for a minute and think it over because I am liable to send you to jail for a year, if you don't want to. Step down for a moment.

* * * * *

THE COURT: Miss Ar., are you still going to refuse to name the father? A. Yes.

THE COURT: All right, I have told you what you're subject to. A. I realize it.

THE COURT: Do you think it would be much better for you to take a year in jail? A. Not really, but I'd rather not give the father's name.

THE COURT. Well, I don't make the law. The Legislature makes the law. That is what they say, that you divulge knowledge under oath or else you spend a year in jail. It isn't the thing I want to do anymore than you want to do it. After all, somebody is the father of the child. It's his responsibility to support the child rather than the State support the child. A. The State is not supporting him. I am not on the State any longer.

THE COURT: But the State did support the child at some time. The State is entitled to be reimbursed for

the money they expended for the support of the child.
A. I can reimburse them.

THE COURT: Well, you reimburse them. That is all the State is interested in, the reimbursement. How much money is owed the State on the Ar. matter?

MAN FROM WELFARE DEPARTMENT: We can't tell you at this time, your Honor. We weren't prepared. There was no mention of reimbursement.

MR. TOBIN: May it be continued a week?

THE COURT: I will continued it one week to see what can be worked out on this matter. If nothing can be worked out, you're going to have to go to jail. Continue it one week to February 8th.

MR. TOBIN: Thank you, your Honor.

* * * * *

CASE VII

WELFARE	:	CIRCUIT COURT
COMMISSIONER	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	
E.B.	:	DECEMBER 21, 1972

Before:

The Honorable J. Robert Lacey, J.

Appearances:

For the Plaintiff; Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

E.B. of Terryville, Connecticut, having first been duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. ALDEN:

THE COURT: How old are you?

THE WITNESS: Twenty (20).

THE COURT: Twenty? Go ahead Mr. Alden.

Q. Is it Miss or Mrs.? A. Miss.

Q. And Miss B, are you the mother of a child born around April 25, 1971? A. Yes.

Q. Is that a boy or girl? A. Boy.

Q. And is that child the recipient of welfare, public assistance? A. Yes.

Q. How long has that child been a recipient of welfare? A. Since he was born, the day he was born.

Q. And has the Welfare Department asked you to name the father of that child? A. Yes.

Q. Have you named the father of that child? A. No.

Q. Can you tell us why you haven't named him? A. Yes. Because I don't know who he is.

THE COURT: You do not know who the father of this child is?

THE WITNESS: No.

THE COURT: Is that because you had had relations on or about the time of conception of this child with others besides the individual who is the true father? Do you know what I'm taking about?

THE WITNESS: No.

THE COURT: No? Why don't you know who the father of this child is?

THE WITNESS: I was having trouble with my parents. . . . (Child crying in the courtroom).

THE COURT: Will you kindly remove the child from the courtroom, please? You may go into another

room. Miss B you were having trouble with your parents?

THE WITNESS: Yes.

THE COURT: And what has that to do with the paternity of this child?

THE WITNESS: Well, I went out that night.

THE COURT: What?

THE WITNESS: I went out that day—that night and I was walking in front of the bowling alleys in Winsted and this guy picked me up, and we were drinking.

THE COURT: A guy picked you up. You had never seen him before?

THE WITNESS: No.

THE COURT: In an automobile?

THE WITNESS: Yes.

THE COURT: And you went with him and went drinking.

THE WITNESS: Yes.

THE COURT: You mean drinking liquor?

THE WITNESS: Yes.

THE COURT: And you had relations with him, physical relations?

THE WITNESS: Yes.

THE COURT: You never saw him again? Is that it?

THE WITNESS: Yes.

THE COURT: Did he make any disclosure as to who he was or where he came from?

THE WITNESS: No. I never saw him again.

THE COURT: Never saw him again. But at the time you did see him and while you were with him, did he tell you where he came from, whether he lived in Winsted or anything about where he lived or worked or what his name is—identity?

THE WITNESS: No.

THE COURT: No, he didn't. Go ahead.

BY MR. ALDEN:

Q. This was the man—this was the only man? A. Yes.

Q. I see.

MR. ALDEN: I don't think there is anything else I can ask.

THE COURT: What day did you discover you were pregnant with child?

THE WITNESS: September, late September.

THE COURT: And did you, after that occasion when you were with this individual in Winsted, did you have physical relations with anyone else?

THE WITNESS: No.

THE COURT: So you are reasonably sure then that the father of this child is the unknown male that you had relations with in Winsted?

THE WITNESS: Yes.

MR. ALDEN: I have nothing further.

THE COURT: Step down.

Is this party excused, Mr. Alden?

MR. ALDEN: Yes, your Honor.

THE COURT: You may go.

THE WITNESS: Thank you.

CASE VIII

WELFARE COMMISSIONER	:	CIRCUIT COURT
	:	SEVENTEENTH CIRCUIT
	:	AT BRISTOL
VS.	:	
	:	DECEMBER 21, 1972
T. J.		

Before:

The Honorable J. Robert Lacey, J.

Appearances:

For the Plaintiff; Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

T.J. of , Bristol, Connecticut, having first been duly sworn, testified as follows:

DIRECTION EXAMINATION
BY MR. ALDEN:

Q. How old are you?

THE WITNESS: Twenty-two (22).

THE COURT: Twenty-two?

THE WITNESS: Yes.

THE COURT: And where do you live?

THE WITNESS: . . . .

THE COURT: You may proceed.

Q. T., is that Miss or Mrs.? A. Miss.

Q. And are you the mother of a child born in New Britain on or about September 14, 1970? A. Yes.

Q. And is that child the subject–recipient of public assistance in the State of Connecticut? A. Yes.

Q. Since she was born? Is it he or she? A. She.

Q. Since she was born? A. Yes.

Q. And have you refused to disclose the name of the father of that child? A. One time I have.

Q. They asked you once and at that time you refused? A. Since I had been in Bristol. In New Britain they told me I didn't have to say anything.

Q. Is this the Welfare Department in New Britain? A. Mmm Hmm.

THE COURT: Did you make a statement, in writing, under oath, to anyone from the Welfare Department as to who the father of the child is?

THE WITNESS: No.

THE COURT: Were you asked to?

THE WITNESS: Yes.

THE COURT: You were asked to. Did you refuse to?

THE WITNESS: Yes.

THE COURT: Why did you refuse?

THE WITNESS: Because at the time I didn't want to say anything.

THE COURT: What?

THE WITNESS: I didn't want to say anything at that time.

THE COURT: Are you prepared now to disclose, under oath?

THE WITNESS: Well, I would like to have this continued until I get a lawyer.

THE COURT: For what purpose?

THE WITNESS: Why? I have reasons.

THE COURT: You have reasons! Well, let me tell you that under the law you, by disclosing who the father is, do not subject yourself to any criminal penalty. And I am telling you that for your own protection.

THE WITNESS: Yes, sir.

THE COURT: You cannot be prosecuted for any act of illicit intercourse by reason of the fact that you

disclose here, on the witness stand, the parentage of this child. Do you understand that?

THE WITNESS: No. I don't understand what you said.

THE COURT: I will explain it as carefully as I can.

You have been called here to be examined under oath as to who the father of this child of yours is.

THE WITNESS: Yes.

THE COURT: And I ask you, are you now prepared to disclose the father of the child?

THE WITNESS: Well, not at this time, not until I. . . .

THE COURT: What?

THE WITNESS: Not at this time.

THE COURT: Not now?

THE WITNESS: No, because I would like to get a lawyer first.

THE COURT: Well, what is a lawyer going to do for you?

THE WITNESS: Because there is like a few things I have to discuss besides that. This concerns telling the father of the baby.

THE COURT: Well, this child is the subject of public assistance. The State is paying for it, for the support of this child and under the law if you neglect to bring an action to get support from the father of this child, as the law requires, then the state, the town or whatever agency is furnishing support may bring an action in its own name against the alleged father.

But unless and until there is some disclosure by you as to the identity of that person, the State who is paying out the money or the municipality is powerless to act. You are being examined under oath and you are bound to disclose. You do not incur any criminal penalties by any disclosure. You have immunity under the statute. So I direct you to answer now, under oath, as to the paternity of this child. Go ahead.

THE WITNESS: L. B

THE COURT: Where does he live?

THE WITNESS: In New Britain. I don't know whereabout.

THE COURT: In New Britain. How long had you known him prior to the time you had physical relations?

THE WITNESS: I've known him since I have been up here, about three years.

THE COURT: Is he a negro or caucasian?

THE WITNESS: Negro

THE COURT: Was he employed any where at the time that you were socializing with him?

THE WITNESS: No.

THE COURT: He was unemployed?

THE WITNESS: Yes. He was unemployed.

THE COURT: What? He was working?

THE WITNESS: He wasn't.

THE COURT: He wasn't working. Was he going to school?

THE WITNESS: No, he wasn't. Wasn't doing anything.

THE COURT: Wasn't doing anything. Did you previously live with your parents?

THE WITNESS: I live by myself.

THE COURT: You live by yourself. Where?

THE WITNESS: . . . .

MR. ALDEN: I have nothing further.

THE COURT: Nothing further. You may step down.

Is this matter, T.J. . . . excused?

MR. ALDEN: Yes, she is, your Honor.

THE COURT: You are free to go ma'am.

CASE IX

WELFARE COMMISSIONER	:	CIRCUIT COURT SEVENTEENTH CIRCUIT AT BRISTOL
VS.	:	
D. P.	:	DECEMBER 21, 1972

Before:

The Honorable J. Robert Lacey, J.

Appearances:
For the Plaintiff;

Richard Alden, Esq.
238 Main Street
Bristol, Connecticut

* * * * *

D.P., Bristol, Connecticut, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALDEN:

THE COURT: How old are you ma'am?

THE WITNESS: Twenty (20).

THE COURT: Twenty. You may proceed Mr. Alden.

Q. Is it Miss or Mrs.? A. Mrs.

Q. And are you the mother of a child born out of wedlock around May 2, 1971? A. Yes.

Q. Is that a boy or girl? A. Girl.

Q. And is that child a recipient of public assistance from the Welfare Department? A. Yes.

Q. And how long has she been such? A. For about sixteen (16) months.

Q. And you are now married? A. Yes.

Q. And have you been asked by the Welfare Department to disclose the name of the father of your child? A. Yes.

Q. And have you refused to disclose it? A. I told them I didn't know.

THE COURT: You didn't know the identity of the father?

THE WITNESS: No, I don't know who the father is.

THE COURT: Why?

THE WITNESS: Because I was going out with more than one guy at the time.

THE COURT: You were what?

THE WITNESS: I was going out with more than one guy at the time.

THE COURT: You were going out with more than one guy at the time. Well that indicates then that perhaps you were having relations with a number of persons.

THE WITNESS: Yes.

THE COURT: Well, the name to attach to that is that you were promiscuous. Do you know what that means?

THE WITNESS: No.

THE COURT: Where and when did you have relations that resulted in your pregnancy?

THE WITNESS: Where? What do you mean "Where"?

THE COURT: Where and when did you have relations with some male that resulted in your pregnancy?

THE WITNESS: It had to be in the month of June.

THE COURT: Had to be in June. Well, don't you have any recollection of who you were with?

THE WITNESS: I was going out with more than one.

THE COURT: You were going out with more than one.

Were you asked by any representative of the welfare agency to disclose the identity of the person with whom you had relations that resulted in your pregnancy?

THE WITNESS: Yes.

THE COURT: And you couldn't name him.

THE WITNESS: No, I can't.

BY MR. ALDEN:

Q. D, wouldn't that be around September of 1970? The child was born in May of 1971. A. Yes. It was June or July. It was around there. I found out in September I was pregnant.

Q. When you said "more than one," do you mean two or. . . . A. No. I was going out with several guys.

Q. By "several" how many do you mean, approximately? A. About four or five.

Q. You were going out with them around the summer of 1970, September of 1970? A. Yes, around there.

Q. And you had relations with all five, the four or five? A. Mmm Hmm.

Q. Are they all from Bristol? A. No. New Britain.

Q. All from New Britain? Do you know any of their whereabouts? A. No, I don't. I haven't heard from any of them.

Q. And you live here in Bristol now? A. Yes.

MR. ALDEN: I have nothing further, your Honor.

THE COURT: Well, when you became pregnant with child. . . .

THE WITNESS: Mmm Hmm.

THE COURT: . . . didn't it occur to you that somebody was responsible for that condition?

THE WITNESS: Oh, yes.

THE COURT: And you were concerned, weren't you?

THE WITNESS: Yes.

THE COURT: Were you?

THE WITNESS: Mmm Hmm.

THE COURT: And did you look for that individual?

THE WITNESS: No.

THE COURT: You didn't know who it was?

THE WITNESS: No. You can't look for somebody that I don't know who it is.

THE COURT: And you want the Court to understand that these "several guys" as you called them, you had relations with and you don't know who they are?

THE WITNESS: No.

THE COURT: She was promiscuous to say the least.

Step down.

Is D.P. excused?

MR. ALDEN: Yes, your Honor.

THE COURT: What is her name now that she's married?

MR. ALDEN: That is her name, her married name.

THE COURT: You are excused.

CASE X

CV 2-738-94960

NICHOLAS NORTON, WELFARE COMM. STATE OF CONNECTICUT	:	CIRCUIT COURT, SECOND CIRCUIT
V.	:	AT BRIDGEPORT
MARIE LARRACUENTO	:	NOVEMBER 23, 1973

MEMORANDUM OF DECISION

The within action has been brought by the Welfare Commissioner of the State of Connecticut to compel the defendant to disclose the name of the putative father of one Todd Alexander Larracuento who was born to the defendant, Marie Larracuento, of Bridgeport, Connecticut on July 29, 1972. The action was drawn in the form of a petition pursuant to the provisions of Section 52-440b (a) of the Connecticut General Statutes.

The court finds the following facts:

Said Todd Alexander Larracuento was born to the defendant on July 29, 1972 at the Park City Hospital in Bridgeport, Connecticut. On May 8, 1973 the defendant made application to the State Welfare Department seeking Aid For Dependent Children benefits, which application was duly approved on May 9, 1973. She and her child have been the recipients of state welfare benefits from said date to the date of this hearing. At the time the application was filed the defendant did not disclose the name of the putative father although the application does set forth a request for such a disclosure. Nor was any reason given for her refusal to so disclose.

On or about August 14, 1973, Kenneth Griswold, a welfare department investigator, conducted a further interview with the defendant who still refused to name the father of her child. According to the testimony of Mr. Griswold, no reason was given by her in explanation of her refusal to divulge the putative father's name. The father's name is still unknown to the State Welfare Department.

At the time of trial the benefits received by the defendant and her child amounted to $84.49 per month. The customary benefit which would normally be received by the defendant and her child would have amounted to $204.49 per month. However, at the time the application was filed by the defendant, she did disclose that she was receiving support income in the amount of $120.00 per month. This latter amount was, therefore, deducted from what the normal benefit would have been ($204.49), leaving a net figure of $84.49 per month, which sum has been paid by the Welfare Department since May 9, 1973. According to the testimony of Mr. Griswold, the Welfare Department considers the amount of any benefit so paid (whether it be $204.49 or $84.49) to be an amount which is attributable one-half (½) to the mother and one-half (½) to the child. However, if the mother were self-supporting, or had independent financial means, and the child alone was in need of assistance the State Welfare Department would normally provide the sum of $80.56 per month under the A.F.D.C. program for said child's support.

It was Miss Larracuento's testimony, which the court finds credible, that the reason she did not disclose the name of the putative father to the Welfare Department was because he has been voluntarily providing support for said child in the amount of $120.00 per month; that he has faithfully paid this amount to her on a semi-monthly basis ($60.00) since

the child was born; that she disclosed the monthly payment of $120.00 to the Welfare Department when she first sought assistance under the A.F.D.C. program; that the putative father is married and has a wife and five (5) children who are unaware of the situation and she does not wish to expose either his wife or the children to the knowledge of such an unfortunate event; that he, the putative father, has acknowledged in writing that he is the father of the child (which written acknowledgement counsel for the defendant represented to the court has been turned over to him by the defendant for safekeeping with authority to turn the same over to the State Welfare Department should the putative father leave the jurisdiction at any time in the future and fail to carry out his support obligation); and that for all of the aforesaid reasons she would be reluctant to disclose his name at the present time.

The issue before the court is whether it should order the defendant to disclose the name of the putative father in order that an action to establish paternity of said child may be instituted.

The within action was brought pursuant to Section 52-440b (a) of the Connecticut General Statutes, Revision of 1958, as amended. The statute, together with sub-section (b) setting forth the penalty provision for anyone refusing to disclose such information, provides as follows:

> Sec. 53-440b. [*sic*] Compelling disclosure of name of putative father and institution of action. (a) if the mother of any child born out of wedlock, or the mother of any child born to any married woman during marriage which child shall be found not be issue of the marriage terminated by a divorce decreee of any court of competent jurisdiction, fails or refuses to disclose the name of the putative father of such child under oath to the welfare commissioner if such child is a recipient of public assistance, or to a selectman of a town in which

such child resides, if such child is a recipient of general assistance, or otherwise to a guardian or a guardian ad litem of such child, such mother may be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath and to institute an action to establish the paternity of said child.

(b) Any woman who, having been cited to appear before a judge of the circuit court pursuant to subsection (a), fails to appears or fails to disclose or fails to prosecute a paternity action may be found to be in contempt of said court and may be fined not more than two hundred dollars or imprisoned not more than one year or both.

The issue of the constitutionality of the above cited statute was recently decided by a three judge court in the case of *Donna Doe et als v. Nicholas Norton, individually, and as Welfare Commissioner of the State of Connecticut,* Memorandum of Decision, dated and filed September 5, 1973, U.S. District Court, Hartford, Connecticut, Civil No. 15579. Blumenfeld, District Judge, and No. 15589 (companion case). In a well reasoned and detailed opinion the court found that the statute in question was not in irreconcilable conflict with the provisions, basic purposes and objectives of the A.F.D.C. Act (Social Security Act) (under which the State Welfare Department receives financial assistance from the Federal Government together with matching funds from the State of Connecticut) so as to be invalid under the supremacy clause; that the *unwed* mother's right to privacy (as distinguished from marital privacy) is not unduly impinged upon, nor, in view of the immunity grant extended to the unwed mother as well as the putative father (Sec. 52-435 (b) and (e) of C.G.S.), is the Fifth Amendment privilege against self incrimination violated; that what might appear to be a discriminatory classification based upon illegitimacy of children, when viewed in light of the fact that the

statute operates to the advantage rather than to the disadvantage of such children, is not an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment; nor is the classification of "unwed mothers of children receiving public assistance" a discriminatory one when the statute itself provides that disclosure of the putative's father's name may be ordered to be given not only to the welfare department, in the case of children receiving public assistance, but also to the guardian or guardian ad litem of any such children.– in other words the classification bears a rational relationship to a legitimate state purpose, i.e. to enforce the obligation of the father to support the child whether the child is a recipient of public assistance or in the custody of a guardian who may be assuming said child's support. A reading of the above cited case leaves no doubt that the constitutionality of the statute has been thoroughly examined and affirmed.

A preliminary question which presents itself to the court before any determination of whether the mother should be compelled to disclose the name of the putative father is whether the court is vested under the statute with any discretion in the matter or whether an order compelling disclosure must be ordered regardless of the circumstances. The pertinent portion of Sec. 52-440b (a) reads as follows:

> "... such mother *may* be cited to appear before any judge of the circuit court and compelled to disclose the name of the putative father under oath...." (Emphases supplied)

There is no question but what from the language used there is a discretion vested in the issuing judge as to whether a citation should or should not issue in the first instance. As to whether the meaning of the term "may be" was also intended by the legislature to carry over to the word "compelled" is not entirely clear.

However, the court is of the opinion that it was so intended. In fact a reading of sub-section (b) of the same statute discloses that the legislature did in fact use the term "*may be* found in contempt" when discussing the punishment to be meted out to a mother who "fails to appear or fails to disclose" (the name of the putative father) (emphasis supplied). A reading of the majority opinion of *Donna Doe et als v. Nicholas Norton, individually and as Welfare Commissioner of the State of Connecticut*, supra, also makes it clear that the U.S. District Court was of the opinion, namely, that the legislature vested discretion in the trial court as to whether or not sanctions should be imposed in the face of a refusal on the part of an unwed mother to disclose the putative father's name:

> "... this does not mean that the sanctions permitted by the statute are likely to be woodenly imposed without regard for impact upon the family.
>
> We are unwilling to assume such an unthinking automatic exercise of judicial power by the state judiciary. In the event of a mother's failure to disclose the father's name, the statute provides that she "may" be found in contempt and "may" be fined or imprisoned. This authorizes the exercise of sound judicial discretion to determine whether in a particular case non-disclosure warrants a finding of contempt or the imposition of penalties. In this regard, the statute is in marked contrast to other Connecticut disclosure statutes, which provide that in the event a person obligated to furnish information refuses to do so, a state judge "shall commit such person to jail until he testifies..." *E.g.*, Conn. Gen. Stats. 17-2a (witnesses at welfare department hearings); Conn. Gen. Stats. 12-2 (witnesses at tax department hearings); Conn. Gen. Stats. 30-8 (witnesses at liquor control commission hearings). We need not anticipate at

this point the variety of situations that will confront the state circuit court judges before whom contempt citations will be sought. It is sufficient in this litigation, which attacks the statute on its face, to note that the statute, in its application, does not preclude and, indeed, appears to specify the exercise of sound judicial discretion." (Footnote 14, Page 16a)

This court is, likewise, of the opinion that it does have discretionary power to determine whether, under all of the circumstances presented, an order ought to be issued to the defendant to make the disclosure which is sought by the plaintiff, or otherwise be exposed to such punishment as is set forth in the statute.

The real question at issue then becomes one of whether, under all of the facts and circumstances as proven, the court should find under its discretionary power that the mother should be compelled to name the putative father.

A weighing of all of the testimony elicited from the witnesses called by the State has not convinced the court by a fair preponderance of the evidence that the plaintiff is, in fact, paying any substantial financial assistance for the support of the defendant's child. The amount of the putative father's monthly payment, as voluntarily made by him to satisfy his legal obligation to support said child ($120.00 per month), has been faithfully paid to the mother since the child was born. In computing the amount of financial aid which the mother and child would normally be entitled to receive under the State's A.F.D.C. program ($204.49 per month), the State did deduct the support payment of $120.00 per month made by the putative father, leaving a net benefit payment by the State of $84.49 per month. Although it was the testimony of the State Welfare Department investigator that the State considers one-half of this net amount to be for the child and

one-half for the unwed mother, i.e. $42.25 to each, the percentage division is obviously an arbitrary allocation when viewed in the light of the same witnesses' testimony that if the mother were financially independent and had no need for public assistance, the maximum amount which would be paid for support of the child on a monthly basis would normally be $80.56 per month. When the child is already receiving support money in the sum of $120.00 per month as paid by the putative father, it is difficult to understand the conclusion of the Welfare Department that any of the $84.49 per month can be said to be allocable to support of the child. Certainly the payment which the putative father makes can only be for the sole benefit of the child. The putative father clearly has no obligation to support the child's mother, nor is the mother, under the reasoning of *Bourque v. Commissioner of Welfare*, 6 Conn. Cir. Ct. 685, 308 A.2d 543 (1972), entitled to appropriate any of said sum for the benefit of herself or any other children she might have. The court is not persuaded from the testimony of the State Welfare investigator that the so-called 50-50 allocation of the net benefit of $84.49 is anything more than an arbitrary division without any basis in fact. In other words, and borrowing at the same time from the concept of Judge Newman as set forth in a separate concurring opinion, the State's interest should be of such a substantial nature as to outweigh the mother's constitutionally protected right to privacy in sezual and child rearing matters. In fact, Judge Newman suggests that a disproportionate imbalance between the interest which the State seeks to protect and the mother's interest in the right to privacy may well pose a constitutional question. Without deciding whether such an issue was in fact presented to this court, or whether the application of the statute in this instance makes it so clearly unconstitutional that it ought to be ruled

upon adversely to the State at this level, the court does take the position that the State's financial interest accruing from the monthly benefits paid in behalf of the child is so insignificant, if it exists at all, that under the circumstances the court ought not require the defendant to disclose the name of the putative father. The primary purpose of the statute is to protect the State's coffers. The court is not convinced that the State's financial resources have been invaded to any substantial degree, if at all, insofar as support payments for the defendant's child are concerned.

Counsel for the State has urged the court to compel such a disclosure for the following reasons:

(1) The primary purpose of the statute is to enforce the obligation of the father to support his own child and, thereby, secure to the child the long term interest of knowing the identity of his father so that his future support needs may be met.

(2) If the putative father dies, the child would be without remedy unless such an adjudication of paternity is had.

(3) Should the putative father leave the jurisdiction, the child might be forever prejudiced by such lack of adjudication.

(4) The running of the Statute of Limitations could prejudice the child's future financial position.

In so far as the possible demise of the putative father in the future might work a hardship upon the child where no adjudication of paternity has been had, it is not always possible to provide for the contingency of death in any event. Assuming an adjudication of paternity were to be obtained in advance of his demise, if the father should die without assets a recorded court order of support would be meaningless. In fact, the putative father's present support payment, admittedly a generous one, if used wisely and frugally by the

defendant, could turn out to have a total worth of much greater proportions than might well be accomplished by virtue of a court order.

In the meantime, if the father of the defendant's child refuses to pay said amount in the future, or reduces said sum to an amount where it is obvious that the State is being compelled to contribute a substantial amount for the child's support, the change in circumstances might well warrant the granting of a petition similar to the one before the court. Obviously, so long as support payments are being made the State [*sic*] of Limitations will not be tolled, not, if the father removes himself to another jurisdiction will the Statute run to the prejudice of the State.

The court is of the opinion that, under all of the facts and circumstances appertaining at this time, the ends of justice will best be served by not compelling the defendant to make the disclosure requested in the instant petition.

Accordingly, the requested order of disclosure is denied and the petition is dismissed.

/s/ Henebry
Henebry, J.